



Reprinted  
March 1, 2006

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## ENGROSSED SENATE BILL No. 321

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DIGEST OF SB 321 (Updated February 28, 2006 6:29 pm - DI 102)

**Citations Affected:** IC 5-28; IC 22-4.

**Synopsis:** Unemployment insurance. Transfers numerous rulemaking and administrative duties of the unemployment insurance board (board) to the department of workforce development (department). Reduces from 150 to 30 days the time within which a successor employer is required to file an application to assume a predecessor employer's experience account. Establishes civil penalties for an individual who fails to disclose or falsifies information to receive a benefit. Provides additional circumstances in which an administrative law judge or the review board may hold hearings by telephone. Provides that the department may not disclose to an employer the current address or location of a claimant who is the victim of family or domestic violence, and that an employer or its agent that is aware that a claim has been made shall keep that information confidential. Repeals and restates (Continued next page)

**Effective:** Upon passage; July 1, 2006; January 1, 2007.

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**Kruse, Harrison**  
(HOUSE SPONSOR — TORR)

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January 10, 2006, read first time and referred to Committee on Pensions and Labor.  
January 19, 2006, reported favorably — Do Pass.  
January 24, 2006, read second time, amended, ordered engrossed.  
January 25, 2006, engrossed.  
January 26, 2006, read third time, passed. Yeas 31, nays 17. Technical correction.  
January 27, 2006, engrossed.

HOUSE ACTION

February 2, 2006, read first time and referred to Committee on Insurance.  
February 7, 2006, reassigned to Committee on Employment and Labor.  
February 23, 2006, amended, reported — Do Pass.  
February 28, 2006, read second time, amended, ordered engrossed.

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ES 321—LS 7016/DI 102+



provisions concerning an individual's failure to disclose earnings and witness fees. Authorizes the department to allocate not more than \$2 million dollars annually from the special employment and training services fund to establish reemployment training accounts for dislocated department employees. Repeals language: (1) concerning board rules; and (2) requiring the board to print and distribute certain material. Permits an employer that employs fewer than 20 full-time employees to opt out of the skills 2016 training program, including payment of the program's assessments and provides that an employer that opts out of the program is not eligible to receive a program grant. Makes technical corrections. Makes conforming amendments.

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Reprinted  
March 1, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 321

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-28-27-3, AS ADDED BY P.L.202-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2007]: Sec. 3. (a) The skills 2016 training fund is  
4 established to do the following:

5 (1) Administer the costs of the skills 2016 training program  
6 established under IC 22-4-10.5.

7 (2) Undertake any program or activity that furthers the purposes  
8 of IC 22-4-10.5.

9 (3) Refund skills 2016 training assessments erroneously collected  
10 and deposited in the fund.

11 (b) The money in the fund shall be allocated as follows:

12 (1) An amount to be determined annually shall be set aside for the  
13 payment of refunds from the fund.

14 (2) The remainder of the money in the fund shall be allocated to  
15 employers or consortiums for incumbent worker training grants  
16 that enable workers to obtain recognizable credentials or  
17 certifications and transferable employment skills that improve

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employer competitiveness.

(c) Special consideration shall be given to the state educational institution established under IC 20-12-61 to be the provider of the training funded under this chapter whenever the state educational institution:

- (1) meets the identified training needs of an employer or a consortium with an existing credentialing or certification program; and
- (2) is the most cost effective provider.

(d) For the incumbent worker training grants described in subsection (b), the department of workforce development shall do the following:

- (1) Provide grant applications to interested employers and consortiums.
- (2) Accept completed applications for the grants.
- (3) Obtain all information necessary or appropriate to determine whether an applicant qualifies for a grant, including information concerning:
  - (A) the applicant;
  - (B) the training to be offered;
  - (C) the training provider; and
  - (D) the workers to be trained.

(4) Prepare summaries or other reports to assist the secretary of commerce in reviewing the grant applications.

(e) The department of workforce development shall forward the grant applications and other information collected or received by the department under subsection (d) to the secretary of commerce who shall allocate the money in the fund in accordance with subsections (b) and (c), after considering the information provided by the department of workforce development.

(f) The corporation shall enter into an agreement with the department of workforce development for the department of workforce development to administer the fund using money appropriated from the fund.

(g) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(h) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(i) The fund consists of the following:

- (1) Assessments deposited in the fund.
- (2) Earnings acquired through the use of money belonging to the

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fund.

(3) Money deposited in the fund from any other source.

(4) Interest and penalties collected.

(j) Any balance in the fund does not lapse but is available continuously to the corporation for expenditures for the program established under IC 22-4-10.5 consistent with this chapter, after considering any information concerning an expenditure provided by the department of workforce development.

(k) **An employer who makes the election described in IC 22-4-10.5-3.2 is not eligible to receive an allocation from the fund.**

SECTION 2. IC 22-4-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. **Except as provided in IC 22-4-11.5**, "computation date" means June 30 of the year preceding the effective date of new rates of contribution, except that in the event, after having been legally terminated, an employer again becomes subject to this article during the last six (6) months of a calendar year and resumes ~~his~~ **the employer's** former position with respect to the resources and liabilities of the experience account, then and in such case ~~his~~ **the employer's** first "computation date" shall mean December 31 of the fourth consecutive calendar year of such subjectivity and thereafter "computation date" for such employer shall mean June 30.

SECTION 3. IC 22-4-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. "Initial claim" means a written application, in a form prescribed by the ~~board~~, **department**, made by an individual for the determination of ~~his~~ **the individual's** status as an insured worker.

SECTION 4. IC 22-4-2-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. "Additional claim" means a written application for a determination of benefit eligibility, made by an individual in a form prescribed by the ~~board~~, **department**, to begin a second or subsequent series of claims in a benefit period, by which application the individual certifies to new unemployment resulting from a break in or loss of work which has occurred since the last claim was filed by such individual.

SECTION 5. IC 22-4-2-39 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 39. **As used in this article, "liability administrative law judge" means a person who is:**

(1) **employed as an administrative law judge under IC 22-4-17-4; and**

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**(2) authorized to hear matters described in IC 22-4-32-1.**

SECTION 6. IC 22-4-7-2 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2006]: Sec. 2. "Employer" also means **the following:**

(a) Any employing unit whether or not an employing unit at the time of the acquisition which acquires the organization, trade, or business within this state of another which at the time of such acquisition is an employer subject to this article, and any employing unit whether or not an employing unit at the time of the acquisition which acquires substantially all the assets within this state of such an employer used in or in connection with the operation of such trade or business, if the acquisition of substantially all such assets of such trade or business results in or is used in the operation or continuance of an organization, trade, or business.

(b) Any employing unit (whether or not an employing unit at the time of acquisition) which acquires a distinct and segregable portion of the organization, trade, or business within this state of another employing unit which at the time of such acquisition is an employer subject to this article only if the employment experience of the disposing employing unit combined with the employment of its predecessor or predecessors would have qualified such employing unit under ~~IC 22-4-7-1~~ **section 1 of this chapter** if the portion acquired had constituted its entire organization, trade, or business and the acquisition results in the operation or continuance of an organization, trade, or business.

(c) Any employing unit which, having become an employer under ~~IC 22-4-7-1, 22-4-7-2(a), 22-4-7-2(b), 22-4-7-2(d), 22-4-7-2(f), or 22-4-7-2(h)~~, **section 1, 2(a), 2(b), 2(d), 2(f), or 2(h) of this chapter**, has not ceased to be an employer by compliance with the provisions of IC 22-4-9-2 and IC 22-4-9-3.

(d) For the effective period of its election pursuant to IC 22-4-9-4 or 22-4-9-5, any other employing unit which has elected to become fully subject to this article.

(e) Any employing unit for which service in employment as defined in IC 22-4-8-2(l) is performed. In determining whether an employing unit for which service other than agricultural labor is also performed is an employer under sections 1 or 2 of this chapter, the wages earned or the employment of an employee performing service in agricultural labor ~~after December 31, 1977~~, may not be taken into account. If an employing unit is determined an employer of agricultural labor, the employing unit shall be determined an employer for the purposes of section 1 of this chapter.

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(f) Any employing unit not an employer by reason of any other paragraph of ~~IC 22-4-7-2(a) through 22-4-7-2(e)~~ **section 2(a) through 2(e) of this chapter** inclusive, for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment ~~compensation~~ **insurance** fund; or which, as a condition for approval of this article for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this article; however, an employing unit subject to contribution solely because of the terms of this subsection may file a written application to cover and insure ~~his~~ **the employing unit's** employees under the unemployment ~~compensation~~ **insurance** law of another jurisdiction. Upon approval of such application by the ~~board;~~ **department**, the employing unit shall not be deemed to be an employer and such service shall not be deemed employment under this article.

(g) Any employing unit for which service in employment, as defined in IC 22-4-8-2(i) ~~is performed after December 31, 1971 and subsequent to December 31, 1977;~~ any employing unit for which service in employment is performed; as defined in ~~or~~ IC 22-4-8-2(i)(1), ~~is performed.~~

(h) Any employing unit for which service in employment, as defined in IC 22-4-8-2(j) is performed. ~~after December 31, 1971.~~

(i) Any employing unit for which service in employment as defined in IC 22-4-8-2(m) is performed. In determining whether an employing unit for which service other than domestic service is also performed is an employer under sections 1 or 2 of this chapter, the wages earned or the employment of an employee performing domestic service ~~after December 31, 1977;~~ may not be taken into account.

SECTION 7. IC 22-4-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) "Employment," subject to the other provisions of this section, means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

~~(a)~~ (b) Services performed by an individual for remuneration shall be deemed to be employment subject to this article irrespective of whether the common-law relationship of master and servant exists, unless and until it is **all the following conditions are** shown to the satisfaction of the ~~board that~~ (A) ~~such~~ **department**:

(1) **The** individual has been and will continue to be free from control and direction in connection with the performance of such

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service, both under ~~his~~ **the individual's** contract of service and in fact.

~~(B) such~~ **(2) The** service is performed outside the usual course of the business for which the service is performed. ~~and~~

~~(C) such~~ **(3) The** individual:

**(A)** is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed; or

**(B)** is a sales agent who receives remuneration solely upon a commission basis and who is the master of ~~his~~ **the individual's** own time and effort.

~~(b) Such~~ **(c) The** term ~~shall include:~~ **also includes the following:**

(1) Services performed for remuneration by an officer of a corporation in ~~his~~ **the officer's** official corporate capacity.

(2) Services performed for remuneration for any employing unit by an individual:

**(A)** as an agent-driver or commission-driver engaged in distributing products, including but not limited to, meat, vegetables, fruit, bakery, beverages, or laundry or dry-cleaning services for his principal; **or**

**(B)** as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his~~ **the individual's** principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

~~Provided, That~~ **(d)** For purposes of ~~subparagraph (b)(2)~~ **subsection (c)(2)**, the term "employment" shall include services described in ~~(A)~~ **subsection (c)(2)(A)** and ~~(B)~~ **(c)(2)(B)** only if **all the following conditions are met:**

~~i.~~ **(1)** The contract of service contemplates that substantially all of the services are to be performed personally by such individual.

~~ii.~~ **(2)** The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation). ~~and~~

~~iii.~~ **(3)** The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

SECTION 8. IC 22-4-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. "Employment" shall not include

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the following:

(a) (1) Except as provided in section 2(i) of this chapter, service performed prior to January 1, 1978, in the employ of this state, any other state, any town or city, or political subdivision, or any instrumentality of any of them, other than service performed in the employ of a municipally owned public utility as defined in this article; or service performed in the employ of the United States of America, or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this article, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation statute, all of the provisions of this article shall be applicable to such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. However, if this state shall not be certified for any year by the Secretary of Labor under Section 3304 of the Internal Revenue Code the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in IC 22-4-32-19 with respect to contribution erroneously paid or wrongfully assessed.

(b) (2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; however, the ~~board~~ **department** is authorized to enter into agreements with the proper agencies under such Act of Congress which agreements shall become effective ten (10) days after publication thereof, ~~in the manner provided in IC 22-4-19-2 for rules of the board; in accordance with rules adopted by the department under IC 4-22-2,~~ to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this article, acquired rights to unemployment compensation under such Act of Congress, or who have, after having acquired potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this article.

(c) (3) "Agricultural labor" as provided in section 2(l)(1) of this chapter shall include only services performed:

(i) (A) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,

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including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(ii) **(B)** in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) **(C)** in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act (**12 U.S.C. 1141j(g)**) as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) ~~(A)~~ **(D)** in the employ of:

(i) the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

**or**

~~(B) in the employ of~~ (ii) a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in ~~subdivision (A);~~ **item (i)**, but only if such operators produce more than one-half (1/2) of the commodity with respect to which such service is performed;

~~(C) except~~ the provisions of ~~subdivisions (A) and (B)~~ **items (i) and (ii)** shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

~~(v)~~ **(E)** on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

**(4)** As used in ~~this subsection,~~ **subdivision (3)**, "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms,

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1 nurseries, orchards, greenhouses, or other similar structures used  
 2 primarily for the raising of agricultural or horticultural  
 3 commodities.

4 ~~(d)~~ **(5)** Domestic service in a private home, local college club, or  
 5 local chapter of a college fraternity or sorority, except as provided  
 6 in section 2(m) of this chapter.

7 ~~(e)~~ **(6)** Service performed on or in connection with a vessel or  
 8 aircraft not an American vessel or American aircraft, if the  
 9 employee is employed on and in connection with such vessel or  
 10 aircraft when outside the United States.

11 ~~(f)~~ **(7)** Service performed by an individual in the employ of child  
 12 or spouse, and service performed by a child under the age of  
 13 twenty-one (21) in the employ of a parent.

14 ~~(g)~~ **(8)** Service not in the course of the employing unit's trade or  
 15 business performed in any calendar quarter by an individual,  
 16 unless the cash remuneration paid for such service is fifty dollars  
 17 (\$50) or more and such service is performed by an individual who  
 18 is regularly employed by such employing unit to perform such  
 19 service. For the purposes of this ~~subsection~~, **subdivision**, an  
 20 individual shall be deemed to be regularly employed to perform  
 21 service not in the course of an employing unit's trade or business  
 22 during a calendar quarter only if:

23 ~~(i)~~ **(A)** on each of some of twenty-four (24) days during such  
 24 quarter such individual performs such service for some portion  
 25 of the day; or

26 ~~(ii)~~ **(B)** such individual was regularly employed (as determined  
 27 under clause ~~(i)~~ **(A)**) by such employing unit in the  
 28 performance of such service during the preceding calendar  
 29 quarter.

30 ~~(h)~~ **(9)** Service performed by an individual in any calendar quarter  
 31 in the employ of any organization exempt from income tax under  
 32 Section 501 of the Internal Revenue Code (except those services  
 33 included in sections 2(i) and 2(j) of this chapter if the  
 34 remuneration for such service is less than fifty dollars (\$50)).

35 ~~(i)~~ **(10)** Service performed in the employ of a hospital, if such  
 36 service is performed by a patient of such hospital.

37 ~~(j)~~ **(11)** Service performed in the employ of a school, college, or  
 38 university if such service is performed:

39 ~~(i)~~ **(A)** by a student who is enrolled and is regularly attending  
 40 classes at such school, college, or university; or

41 ~~(ii)~~ **(B)** by the spouse of such a student, if such spouse is  
 42 advised, at the time such spouse commences to perform such

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service, that:

~~(A)~~ (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and

~~(B)~~ (ii) such employment will not be covered by any program of unemployment insurance.

~~(K)~~ (12) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

~~(H)~~ (13) Service performed in the employ of a government foreign to the United States of America, including service as a consular or other officer or employee or a nondiplomatic representative.

~~(M)~~ (14) Service performed in the employ of an instrumentality wholly owned by a government foreign to that of the United States of America, if the service is of a character similar to that performed in foreign countries by employees of the United States of America or of an instrumentality thereof, and if the board finds that the Secretary of State of the United States has certified to the Secretary of the Treasury of the United States that the government, foreign to the United States, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in such country by employees of the United States and of instrumentalities thereof.

~~(N)~~ (15) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four (4) year course in a medical school chartered or approved pursuant to state law.

~~(O)~~ (16) Service performed by an individual as an insurance producer or as an insurance solicitor, if all such service performed

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by such individual is performed for remuneration solely by way of commission.

~~(p)~~(A) (17) Service performed by an individual:

(A) under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) ~~Services performed by an individual~~ in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by ~~him~~ **the individual** at a fixed price, ~~his~~ **the individual's** compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to ~~him~~; **the individual**, whether or not ~~he~~ **the individual** is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

~~(q)~~ (18) Service performed in the employ of an international organization.

~~(r)~~ (19) Except as provided in IC 22-4-7-1, services covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law in accordance with an arrangement pursuant to IC 22-4-22-1 through IC 22-4-22-5, during the effective period of such election.

~~(s)~~ (20) If the service performed during one-half (1/2) or more of any pay period by an individual for an employing unit constitutes employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any pay period by such an individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, "pay period" means a period of not more than thirty-one (31) consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit. This subsection shall not be applicable with respect to services performed in a pay period by any such individual where any such service is excepted by ~~subsection (b)~~ **subdivision (2)**.

~~(t)~~ (21) Service performed by an inmate of a custodial or penal institution.

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(~~tt~~) (22) Service performed as a precinct election officer (as defined in IC 3-5-2-40.1).

SECTION 9. IC 22-4-9-3, AS AMENDED BY P.L.98-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) This section is subject to the provisions of IC 22-4-11.5.

(b) Any employer subject to this article as successor to an employer pursuant to the provisions of IC 22-4-7-2(a) or IC 22-4-7-2(b) shall cease to be an employer at the end of the year in which the acquisition occurs only if the ~~board~~ **department** finds that within such calendar year the employment experience of the predecessor prior to the date of disposition combined with the employment experience of the successor subsequent to the date of acquisition would not be sufficient to qualify the successor employer as an employer under the provisions of IC 22-4-7-1. No such successor employer may cease to be an employer subject to this article at the end of the first year of the current period of coverage of the predecessor employer. If all of the resources and liabilities of the experience account of an employer are assumed by another in accordance with the provisions of IC 22-4-10-6 or IC 22-4-10-7, such employer's status as employer and under this article is hereby terminated unless and until such employer subsequently qualifies under the provisions of IC 22-4-7-1 or IC 22-4-7-2 or elects to become an employer under sections 4 or 5 of this chapter.

(c) If no application for termination, as herein provided, is filed by an employer and four (4) full calendar years have elapsed since any contributions have become payable from such employer, then and in such cases the ~~board~~ **department** may terminate such employer's experience account.

SECTION 10. IC 22-4-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. Any employing unit not otherwise subject to this article which files with the ~~board~~ **department** its written election to become an employer subject to this article for not less than two (2) calendar years shall, with the written approval of such election by the ~~board~~, **department**, become an employer subject to this article to the same extent as all other employers as of the date stated in such approval. ~~provided~~, However, ~~that~~ the voluntary election of any such employer shall become inoperative if such employing unit becomes an employer by reason of IC 22-4-7-1.

SECTION 11. IC 22-4-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Contributions shall accrue and become payable from each employer for each calendar

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year in which it is subject to this article with respect to wages paid during such calendar year. ~~except~~ Where the status of an employer is changed by cessation or disposition of business or appointment of a receiver, trustees, trustee in bankruptcy, or other fiduciary, contributions shall immediately become due and payable on the basis of wages paid or payable by such employer as of the date of the change of status. Such contributions shall be paid to the department in such manner as the ~~commissioner~~ **department** may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in an employer's employ. When contributions are determined in accordance with Schedule A as provided in IC 22-4-11-3, the ~~board~~ **department** may prescribe rules to require an estimated advance payment of contributions in whole or in part, if in the judgment of the ~~board~~ **department** such advance payments will avoid a debit balance in the fund during the calendar quarter to which the advance payment applies. An adjustment shall be made following the quarter in which an advance payment has been made to reflect the difference between the estimated contribution and the contribution actually payable. Advance payment of contributions shall not be required for more than one (1) calendar quarter in any calendar year.

~~(a)(1)~~ **(b)** Any employer which is, or becomes, subject to this article by reason of IC 22-4-7-2(g) or IC 22-4-7-2(h) shall pay contributions as provided under this article unless it elects to become liable for "payments in lieu of contributions" (as defined in IC 22-4-2-32).

~~(2)~~ **(c)** Except as provided in subsection ~~(a)(4)~~, **(e)**, the election to become liable for "payments in lieu of contributions" must be filed with the department on a form prescribed by the ~~commissioner~~ **department** not later than thirty-one (31) days following the date upon which such entity qualifies as an employer under this article, and shall be for a period of not less than two (2) calendar years.

~~(3)~~ **(d)** Any employer which makes an election in accordance with ~~subdivisions (1) through (2)~~ **subsections (b) and (c)** will continue to be liable for "payments in lieu of contributions" until it files with the ~~commissioner~~ **department** a written notice terminating its election. ~~This~~ **The notice filed by an employer to terminate its election** must be filed not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective.

~~(4)~~ **(e)** Any employer which qualifies to elect to become liable for "payments in lieu of contributions" and has been paying contributions under this article ~~for a period subsequent to January 1, 1972~~, may change to a reimbursable basis by filing with the department not later than thirty (30) days prior to the beginning of any taxable year a written

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notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

~~(b)(1)~~ **(f)** Employers making "payments in lieu of contributions" under ~~subsection (a)~~ **subsections (b) and (c)** shall make reimbursement payments monthly. At the end of each calendar month the department shall bill each such employer (or group of employers) for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such month that is attributable to services in the employ of such employers or group of employers. Governmental entities of this state and its political subdivisions electing to make "payments in lieu of contributions" shall be billed by the department at the end of each calendar month for an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during the month that is attributable to service in the employ of the governmental entities.

~~(2)~~ **(g)** Payment of any bill rendered under ~~subdivision (1)~~ **subsection (f)** shall be made not later than thirty (30) days after such bill was mailed to the last known address of the employer or was otherwise delivered to it, unless there has been an application for review and redetermination ~~in accordance with subdivision (4)~~. **filed under subsection (i).**

~~(3)~~ **(h)** Payments made by any employer under the provisions of ~~this subsection~~ **subsections (f) through (j)** shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the employer.

~~(4)~~ **(i)** The amount due specified in any bill from the department shall be conclusive on the employer unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the employer files an application for redetermination. If the employer so files, the employer shall have an opportunity to be heard, and such hearing shall be conducted by a liability administrative law judge pursuant to IC 22-4-32-1 through IC 22-4-32-15. After the hearing, the liability administrative law judge shall immediately notify the employer in writing of the finding, and the bill, if any, so made shall be final, in the absence of judicial review proceedings, fifteen (15) days after such notice is issued.

~~(5)~~ **(j)** Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to IC 22-4-29, apply to past due contributions.

~~(c)~~ **(k)** Two (2) or more employers that have elected to become liable for "payments in lieu of contributions" in accordance with

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1 ~~subsection (a)~~ **subsections (b) and (c)** may file a joint application with  
 2 the department for the establishment of a group account for the purpose  
 3 of sharing the cost of benefits paid that are attributable to service in the  
 4 employ of such employers. Such group account shall be established as  
 5 provided in regulations prescribed by the commissioner.

6 SECTION 12. IC 22-4-10-3 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. Except as provided  
 8 in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter, each  
 9 employer shall pay contributions equal to ~~the following percentage of~~  
 10 ~~wages: (a) five and four-tenths six-tenths percent (5.4%); (5.6%) of~~  
 11 **wages**, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3,  
 12 ~~and IC 22-4-37-3, and IC 22-4-11.5.~~

13 SECTION 13. IC 22-4-10-4 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. **(a)** Except as  
 15 provided in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter, the  
 16 commissioner shall maintain within the fund a separate experience  
 17 account for each employer and shall credit to such account all  
 18 contributions paid by such employer on its behalf except as otherwise  
 19 provided in this article.

20 **(b)** The commissioner shall also maintain a separate account for  
 21 each employer electing to make payments in lieu of contributions as  
 22 provided in ~~section 1(a)~~ **section 1(b) through 1(e)** of this chapter and  
 23 shall charge to such account all benefits chargeable to such employer  
 24 and credit to such account all reimbursements made by such employer.

25 SECTION 14. IC 22-4-10-6, AS AMENDED BY P.L.98-2005,  
 26 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2006]: Sec. 6. (a) When:

- 28 (1) an employing unit (whether or not an employing unit at the
- 29 time of the acquisition) becomes an employer under
- 30 IC 22-4-7-2(a);
- 31 (2) an employer acquires the organization, trade, or business, or
- 32 substantially all the assets of another employer; or
- 33 (3) an employer transfers all or a portion of the employer's trade
- 34 or business (including the employer's workforce) to another
- 35 employer as described in IC 22-4-11.5-7;

36 the successor employer shall, in accordance with the rules prescribed  
 37 by the ~~board, department~~, assume the position of the predecessor with  
 38 respect to all the resources and liabilities of the predecessor's  
 39 experience account.

40 (b) Except as provided by IC 22-4-11.5, when:

- 41 (1) an employing unit (whether or not an employing unit at the
- 42 time of the acquisition) becomes an employer under

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1 IC 22-4-7-2(b); or

2 (2) an employer acquires a distinct and segregable portion of the  
3 organization, trade, or business within this state of another  
4 employer;

5 the successor employer shall assume the position of the predecessor  
6 employer with respect to the portion of the resources and liabilities of  
7 the predecessor's experience account as pertains to the distinct and  
8 segregable portion of the predecessor's organization, trade, or business  
9 acquired by the successor. An application for the acquiring employer  
10 to assume this portion of the resources and liabilities of the disposing  
11 employer's experience account must be filed with the ~~commissioner~~  
12 **department** on prescribed forms not later than ~~one hundred fifty (150)~~  
13 **thirty (30)** days immediately following the disposition date or not later  
14 than ten (10) days after the disposing and acquiring employers are  
15 mailed or otherwise delivered final notice that the acquiring employer  
16 is a successor employer, whichever is the earlier date. This portion of  
17 the resources and liabilities of the disposing employer's experience  
18 account shall be transferred in accordance with IC 22-4-11.5.

19 (c) Except as provided by IC 22-4-11.5, the successor employer, if  
20 an employer prior to the acquisition, shall pay at the rate of  
21 contribution originally assigned to it for the calendar year in which the  
22 acquisition occurs, until the end of that year. If not an employer prior  
23 to the acquisition, the successor employer shall pay the rate of two and  
24 seven-tenths percent (2.7%) unless the successor employer assumes all  
25 or part of the resources and liabilities of the predecessor employer's  
26 experience account, in which event the successor employer shall pay  
27 at the rate of contribution assigned to the predecessor employer for the  
28 period starting with the first day of the calendar quarter in which the  
29 acquisition occurs, until the end of that year. However, if a successor  
30 employer, not an employer prior to the acquisition, simultaneously  
31 acquires all or part of the experience balance of two (2) or more  
32 employers, the successor employer shall pay at the highest rate  
33 applicable to the experience accounts totally or partially acquired for  
34 the period starting with the first day of the calendar quarter in which  
35 the acquisition occurs, until the end of the year. If the successor  
36 employer had any employment prior to the date of acquisition upon  
37 which contributions were owed under IC 22-4-9-1, the employer's rate  
38 of contribution from the first of the year to the first day of the calendar  
39 quarter in which the acquisition occurred would be two and  
40 seven-tenths percent (2.7%).

41 SECTION 15. IC 22-4-10.5-3 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. The skills 2016

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training assessment is nine hundredths percent (0.09%) to be assessed upon the previous year's taxable wages (as defined in IC 22-4-4-2) paid by all employers except those who have:

**(1) made the election described in section 3.2 of this chapter; or**

**(2) elected to make payments in lieu of contributions (as defined in IC 22-4-2-32).**

SECTION 16. IC 22-4-10.5-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 3.2. (a) This section applies to skills 2016 training assessments payable after July 1, 2007.**

**(b) As used in this section, "employee" means any person employed by another for wages or salary. The term does not include a seasonal worker (as defined in IC 22-4-8-4(b)).**

**(c) An employer subject to this chapter that employs less than twenty (20) full-time employees may file an election each year not to:**

**(1) participate in the skills 2016 training program; and**

**(2) pay the skills 2016 training assessments;**

**with the department on a form prescribed by the commissioner.**

**(d) An employer must make the election described in subsection (c) for a calendar year not later than January 31 of the following year.**

**(e) For purposes of determining whether an employer qualifies to make the election under subsection (c), the number of employees employed by the employer is the average of the number of employees reported by the employer for each quarter of the calendar year for which the employer wants to elect not to:**

**(1) participate in the skills 2016 training program; and**

**(2) pay the skills 2016 training assessments.**

SECTION 17. IC 22-4-10.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 4. (a) This section does not apply to an employer who has made the election described in section 3.2 of this chapter.**

~~(a)~~ **(b) Skills 2016 training assessments accrue and are payable by each employer under section 3 of this chapter for each calendar year in which the employer is subject to IC 22-4-10-1 with respect to wages for employment.**

~~(b)~~ **(c) Skills 2016 training assessments are due and payable to the department by each employer for the purposes set forth in section 2 of this chapter and are not deductible, in whole or in part, from the wages of individuals in the service of the employer.**

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(c) (d) Skills 2016 training assessments paid under this chapter:

(1) shall not be credited to the employer's experience account; and

(2) do not affect the computation of an employer's contribution rate under IC 22-4-11-2.

SECTION 18. IC 22-4-10.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) **Subject to subsection (d)**, skills 2016 assessments unpaid on the date on which they are due and payable bear interest at the rate of one percent (1%) per month or fraction of a month from and after that date until payment plus accrued interest is received by the department.

(b) **Subject to subsection (d)**, a twenty-five dollar (\$25) penalty shall be assessed on any skills 2016 assessments that are unpaid on the date subsequent to the date on which they are due and payable.

(c) All penalty and interest collected on delinquent skills 2016 assessments shall be deposited in the skills 2016 training fund established under ~~IC 22-4-24.5~~ **IC 5-28-27-3**.

**(d) The department may adopt fair and reasonable policies to waive the penalty and interest assessed under this section.**

SECTION 19. IC 22-4-11-2, AS AMENDED BY P.L.98-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the ~~commissioner~~ **department** shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5:

(1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section 3 or 3.3 of this chapter; and

(2) for each calendar year, an employer's rate shall be two and seven-tenths percent (2.7%), except as otherwise provided in IC 22-4-37-3, unless and until:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date; and

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date.

(c) In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall

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not be less than five and ~~four-tenths~~ **six-tenths** percent (~~5.4%~~) **(5.6%)** unless all required contribution and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors for periods prior to and including the computation date have been paid:

- (1) within thirty-one (31) days following the computation date; or
- (2) within ten (10) days after the ~~commissioner~~ **department** has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The ~~commissioner~~ **department** shall give written notice to the employer before this additional condition or requirement shall apply.

(d) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of one percent (1%) until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

(e) On the computation date every employer who had taxable wages in the previous calendar year shall have the employer's experience account charged with the amount determined under the following formula:

STEP ONE: Divide:

(A) the employer's taxable wages for the preceding calendar year; by

(B) the total taxable wages for the preceding calendar year.

STEP TWO: Multiply the quotient determined under STEP ONE by the total amount of benefits charged to the fund under section 1 of this chapter.

(f) One (1) percentage point of the rate imposed under subsection (c) or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer

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pursuant to the maximum rate shall be:

- (1) considered a contribution for the purposes of this article; and
- (2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

SECTION 20. IC 22-4-11.5-2, AS ADDED BY P.L.98-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. As used in this chapter, "administrative law judge" means a person ~~appointed~~ **employed** by the commissioner under IC 22-4-17-4.

SECTION 21. IC 22-4-11.5-5, AS ADDED BY P.L.98-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. As used in this chapter, "violates or attempts to violate" includes

- ~~(1)~~ the intent to evade **a higher employer contribution rate in connection with a transfer of a trade or business through**
- ~~(2)~~ misrepresentation or
- ~~(3)~~ willful nondisclosure **of information relevant to the transfer.**

SECTION 22. IC 22-4-11.5-7, AS ADDED BY P.L.98-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) ~~¶~~ **This section applies to a transfer of a trade or business that meets the following requirements:**

- (1) An employer transfers all or a portion of the employer's trade or business to another employer. ~~and~~
- (2) At the time of the transfer, the two (2) employers have substantially common ownership, management, or control.

**(b)** The successor employer shall assume the experience ~~rating~~ **account balance** of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the transfer.

~~(b)~~ **(c)** The contribution rates of both employers shall be recalculated, and ~~the recalculated rate~~ made effective on the **effective** date ~~that of~~ of the transfer described in subsection (a). ~~is effective~~

~~(c)~~ **(d)** The ~~experience account balance and the~~ payroll of the predecessor employer on the **effective** date of the transfer, and the benefits chargeable to the predecessor employer's original experience account after the **effective** date of the transfer, must be divided between the predecessor employer and the successor employer in accordance with rules adopted by the department under IC 4-22-2.

~~(d)~~ **(e)** Any written determination made by the department is conclusive and binding on both the predecessor employer and the successor employer unless one (1) **employer files** or both employers

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1 file ~~with the department~~ a written protest **with the department** setting  
 2 forth ~~the grounds and all~~ reasons for the protest. A protest under this  
 3 section must be filed not later than ~~ten (10)~~ **fifteen (15)** days after the  
 4 date the department ~~mails~~ **sends** the initial determination to the  
 5 **employing units employers**. The protest shall be heard and determined  
 6 under this section and IC 22-4-32-1 through IC 22-4-32-15. ~~Both~~ The  
 7 predecessor employer, ~~and the~~ successor employer, **and the**  
 8 **department** shall be parties to the hearing before the **liability**  
 9 administrative law judge and are entitled to receive copies of all  
 10 pleadings and the decision.

11 SECTION 23. IC 22-4-11.5-8, AS ADDED BY P.L.98-2005,  
 12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2006]: Sec. 8. (a) If the department determines that an  
 14 employing unit or other person that is not an employer under IC 22-4-7  
 15 at the time of the acquisition has acquired an employer's trade or  
 16 business solely **or primarily** for the purpose of obtaining a lower  
 17 employer contribution rate, the employing unit or other person:

18 (1) may not assume the experience ~~rating~~ **account balance** of the  
 19 predecessor employer for the resources and liabilities of the  
 20 predecessor employer's experience account that are attributable to  
 21 the acquisition; and

22 (2) shall pay the applicable contribution rate as determined under  
 23 ~~this chapter.~~ **article.**

24 (b) In determining whether an employing unit or other person  
 25 acquired a trade or business solely **or primarily** for the purpose of  
 26 obtaining a lower employer contribution rate under subsection (a), the  
 27 ~~commissioner~~ **department** shall consider the following **factors**:

28 (1) The cost of acquiring the trade or business.

29 (2) Whether the employing unit or other person continued the  
 30 business enterprise of the acquired trade or business.

31 (3) The length of time the employing unit or other person  
 32 continued the business enterprise of the acquired trade or  
 33 business.

34 (4) Whether a substantial number of new employees were hired  
 35 to perform duties unrelated to the business enterprise that the  
 36 trade or business conducted before the trade or business was  
 37 acquired.

38 ~~(c) If the commissioner makes an initial determination that a~~  
 39 ~~violation of this chapter has occurred, the commissioner shall promptly~~  
 40 ~~refer the matter to an administrative law judge for a hearing and~~  
 41 ~~decision under this article.~~

42 **(c) Any written determination made by the department is**

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conclusive and binding on the employing unit or other person, unless the employing unit or other person files a written protest with the department setting forth all reasons for the protest. A protest under this section must be filed not later than fifteen (15) days after the date the department sends the initial determination to the employing unit or other person. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. The department and the employing unit or other person shall be parties to the hearing before the liability administrative law judge and are entitled to receive copies of all pleadings and the decision.

SECTION 24. IC 22-4-11.5-9, AS ADDED BY P.L.98-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) A person who knowingly or recklessly:

(1) violates or attempts to violate:

(A) section 7 or 8 of this chapter; or

(B) any other provision of this article related to determining the assumption or assignment of an employer's contribution rate; or

(2) advises another person in a way that results in a violation of:

(A) section 7 or 8 of this chapter; or

(B) any other provision of this article related to determining the assumption or assignment of an employer's contribution rate;

~~commits a Class C misdemeanor:~~ is subject to a civil penalty under this chapter.

(b) If the department determines that an employer (as defined under IC 22-4-7) is subject to a civil penalty under subsection (a)(1), the department shall assign an employer contribution rate equal to one (1) of the following as a civil penalty:

(1) The highest employer contribution rate assignable under this article for the year in which the violation occurred and the following three (3) years.

(2) An additional employer contribution rate of two percent (2%) of the employer's taxable wages (as defined in IC 22-4-4-2) for the year in which the violation occurred and the following three (3) years, if:

(A) an employer is already paying the highest employer contribution rate at the time of the violation; or

(B) the increase in the contribution rate described in subdivision (1) is less than two percent (2%).

(c) If the department determines that a person who is not an

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1 employer (as defined in IC 22-4-7) is subject to a civil penalty  
 2 under subsection (a)(2), the department shall assess a civil penalty  
 3 of not more than five thousand dollars (\$5,000).

4 (d) All civil penalties collected under this section shall be  
 5 deposited in the unemployment insurance benefit fund established  
 6 by IC 22-4-26-1.

7 (e) Any written determination made by the department is  
 8 conclusive and binding on the employing unit, employer, or person  
 9 unless the employing unit, employer, or person files a written  
 10 protest with the department setting forth all reasons for the  
 11 protest. A protest under this section must be filed not later than  
 12 fifteen (15) days after the date the department sends the initial  
 13 determination to the employing unit, employer, or person. The  
 14 protest shall be heard and determined under this section and  
 15 IC 22-4-32-1 through IC 22-4-32-15. The employing unit, employer,  
 16 or person, and the department shall be parties to the hearing  
 17 before the liability administrative law judge and are entitled to  
 18 receive copies of all pleadings and the decision.

19 SECTION 25. IC 22-4-11.5-10, AS AMENDED BY HEA  
 20 1040-2006, SECTION 344, IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) In addition to any other  
 22 penalty imposed, a person who **knowingly, recklessly, or**  
 23 **intentionally** violates this chapter is subject to a civil penalty under  
 24 this chapter.

25 (b) This subsection applies to a person who is an employer (as  
 26 defined in IC 22-4-7). If an administrative law judge determines that a  
 27 person is subject to a civil penalty under subsection (a), the  
 28 administrative law judge shall assign an employer contribution rate  
 29 equal to one (1) of the following as a civil penalty:

30 (1) The highest employer contribution rate assignable under this  
 31 article for:

32 (A) the year in which the violation occurred; and

33 (B) the following three (3) years:

34 (2) An employer contribution rate of two percent (2%) of the  
 35 employer's taxable wages (as defined in IC 22-4-4-2) for the year  
 36 in which the violation occurred and the following three (3) years;  
 37 if:

38 (A) an employer is already paying the highest employer  
 39 contribution rate at the time of the violation; or

40 (B) the increase in the contribution rate described in  
 41 subdivision (1) is less than two percent (2%):

42 (c) This subsection applies to a person who is not an employer (as

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defined in IC 22-4-7). If an administrative law judge determines that a person is subject to a civil penalty under subsection (a), the administrative law judge shall assess a civil penalty of not more than five thousand dollars (\$5,000):

(d) All civil penalties collected under this section shall be deposited in the unemployment insurance benefit fund established by IC 22-4-26-1.

**commits a Class C misdemeanor.**

SECTION 26. IC 22-4-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Benefits designated as unemployment ~~compensation~~ **insurance** benefits shall become payable from the fund to any individual who is or becomes unemployed and eligible for benefits under the terms of this article. All benefits shall be paid through ~~employment offices maintained and operated by this state~~ **the department** or such other agencies as the ~~board~~ **department** by rule may designate at such times and in such manner as the ~~board~~ **department** may prescribe. ~~provided, that the board~~ **The department may prescribe adopt** rules to provide for the payment of benefits due and payable on executed vouchers to persons since deceased; benefits so due and payable may be paid to the legal representative, dependents, or next of kin of the deceased as are found to be entitled thereto, which rules need not conform with the laws of the state governing decedent estates, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the deceased.

SECTION 27. IC 22-4-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Whenever an individual receives benefits or extended benefits to which the individual is not entitled under:**

(1) **this article; or**

(2) **the unemployment insurance law of the United States; the department shall establish that an overpayment has occurred and establish the amount of the overpayment.**

**(b) An individual described in subsection (a) is liable to repay the established amount of the overpayment.**

~~(a)~~ (c) Any individual who **knowingly:**

(1) makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false; or ~~knowingly~~

(2) fails, or causes another to fail, to disclose a material fact; and as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such

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amount, **with interest at the rate of one-half percent (0.5%) per month**, to the **commissioner department** for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the six (6) year period following **the later of the date of the filing of the claim or statement that resulted in the payment of such benefits; if the existence of such misrepresentation or nondisclosure has become final by virtue of an unappealed determination of a deputy; or a decision of an administrative law judge; or the review board; or by a court of competent jurisdiction: the department establishes that an overpayment has occurred or the date that the determination of an overpayment becomes final following the exhaustion of all appeals.**

(b) (d) Any individual who, for any reason other than misrepresentation or nondisclosure as specified in subsection (a); (c), has received any amount as benefits to which the individual is not entitled under this article or because of the subsequent receipt of income deductible from benefits which is allocable to the week or weeks for which such benefits were paid becomes not entitled to such benefits under this article shall be liable to repay such amount to the **commissioner department** for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the three (3) year period following **the later of the date of the filing of the claim or statement that resulted in the payment of such benefits; if the existence of such reason has become final by virtue of an unappealed determination of a deputy or a decision of an administrative law judge; or the review board; or by a court of competent jurisdiction: the department establishes that the overpayment occurred or the date that the determination that an overpayment occurred becomes final following the exhaustion of all appeals.**

(c) (e) When benefits are paid to an individual who was eligible or qualified to receive such payments, but when such payments are made because of the failure of representatives or employees of the department to transmit or communicate to such individual notice of suitable work offered, through the department, to such individual by an employing unit, then and in such cases, the individual shall not be required to repay or refund amounts so received, but such payments shall be deemed to be benefits improperly paid.

(d) (f) Where it is finally determined by a deputy, an administrative law judge, the review board, or a court of competent jurisdiction that an individual has received benefits to which the individual is not entitled under this article, the **commissioner department** shall relieve

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the affected employer's experience account of any benefit charges directly resulting from such overpayment. However, an employer's experience account will not be relieved of the charges resulting from an overpayment of benefits which has been created by a retroactive payment by such employer directly or indirectly to the claimant for a period during which the claimant claimed and was paid benefits unless the employer reports such payment by the end of the calendar quarter following the calendar quarter in which the payment was made or unless and until the overpayment has been collected. Those employers electing to make payments in lieu of contributions shall not have their account relieved as the result of any overpayment unless and until such overpayment has been repaid to the unemployment insurance benefit fund.

(~~e~~) (g) Where any individual is liable to repay any amount to the ~~commissioner~~ **department** for the unemployment insurance benefit fund for the restitution of benefits to which the individual is not entitled under this article, the amount due may be collectible without interest, **except as otherwise provided in subsection (c)**, by civil action in the name of the state of Indiana, on relation of the department, which remedy by civil action shall be in addition to all other existing remedies and to the methods for collection provided in this ~~section~~ **article**.

(~~f~~) (h) Liability for repayment of benefits paid to an individual (other than an individual employed by an employer electing to make payments in lieu of contributions) for any week may be waived upon the request of the individual if:

(1) the benefits were received by the individual without fault of the individual;

(2) the benefits were the result of payments made:

(A) during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; **or**

(B) **because of an error by the employer or the department;** and

(3) repayment would cause economic hardship **to the individual**.

SECTION 28. IC 22-4-13-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. (a) Notwithstanding any other provisions of this article, if an individual knowingly:**

(1) **fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or**

(2) **fails to disclose or has falsified any fact;**

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that would disqualify, reduce, or render the individual ineligible for benefits or extended benefits, the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for the period in which the failure to disclose or falsification occurs.

(b) In addition to amounts forfeited under subsection (a), an individual is subject to the following civil penalties for each instance in which the individual knowingly fails to disclose or falsified any fact which if accurately reported to the department would disqualify, reduce, or render the individual ineligible for benefits or extended benefits:

(1) For the first instance, an amount equal to twenty-five percent (25%) of the benefit overpayment.

(2) For the second instance, an amount equal to fifty percent (50%) of the benefit overpayment.

(3) For the third and each subsequent instance, an amount equal to one hundred percent (100%) of the benefit overpayment.

(c) The department's determination under this section constitutes an initial determination under IC 22-4-17-2(e) and is subject to a hearing and review under IC 22-4-17-3 through IC 22-4-17-15.

(d) Interest and civil penalties collected under this chapter shall be deposited in the special employment and training services fund established under IC 22-4-25-1.

SECTION 29. IC 22-4-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) An unemployed individual is eligible to receive benefits with respect to any week only if the individual has:

(1) registered for work at an employment office or branch thereof or other agency designated by the commissioner within the time limits that the ~~board~~ **department** by rule adopts; and

(2) subsequently reported with the frequency and in the manner, either in person or in writing, that the ~~board~~ **department** by rule adopts.

(b) Failure to comply with subsection (a) shall be excused by the commissioner or the commissioner's authorized representative upon a showing of good cause therefor. The ~~board~~ **department** shall by rule waive or alter the requirements of this section as to such types of cases or situations with respect to which the ~~commissioner~~ **department** finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this article.

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(c) The department shall provide job counseling or training to an individual who remains unemployed for at least four (4) weeks. The manner and duration of the counseling shall be determined by the ~~board~~; **department**.

(d) ~~The board may by rule prescribe procedures for the issuance of unemployment compensation warrants from the local office.~~

**(d) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling, or training that must be conducted in person at a one stop center selected by the individual. The department shall advise an eligible individual that this option is available.**

SECTION 30. IC 22-4-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) ~~This section does not apply to~~ An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) **may restrict the individual's availability because of the individual's need to address the physical, psychological, or legal effects of being a victim of domestic or family violence (as defined in IC 31-9-2-42).**

(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

- (1) is physically and mentally able to work;
- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the ~~commissioner~~; **department**, unless the ~~commissioner~~ **department** determines that:

(A) the individual has completed the reemployment services; or

(B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the board through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment. However, if an otherwise eligible individual is unable to work or unavailable for work on any normal work day of the week the individual shall be eligible to receive benefits with respect to such week reduced by one-third (1/3)

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of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

(c) For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with respect to any week, it is found:

(1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment; or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;

(2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;

(3) that such individual is suspended for misconduct in connection with the individual's work; or

(4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and is available for suitable full-time work with the individual's last employer, or is available for any other full-time employment deemed suitable.

(d) Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The ~~board~~ **department** shall by rule prescribe the conditions under which approval of such training will be granted.

SECTION 31. IC 22-4-15-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. Notwithstanding any other provisions of this article, benefits otherwise payable for any week under this article shall not be denied or reduced on account of any payment or payments the claimant receives, has received, will receive,

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or accrues right to receive with respect to or based upon such week under a private unemployment benefit plan financed in whole or part by his employer or former employer. No claim for repayment of benefits and no deduction from benefits otherwise payable under this article shall be made under ~~IC 22-4-13-1(b)~~ **IC 22-4-13-1(d)** and ~~IC 22-4-13-1(c)~~ **IC 22-4-13-1(e)** because of payments which have been or will be made under such private unemployment benefit plans.

SECTION 32. IC 22-4-17-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Claims for benefits shall be made in accordance with ~~such regulations as the board may prescribe; however,~~ **rules adopted by the department.** The ~~board~~ **department** shall ~~prescribe~~ **adopt** reasonable procedures consistent with the provisions of this article for the expediting of the taking of claims of individuals for benefits in instances of mass layoffs by employers, the purpose of which shall be to minimize the amount of time required for such individuals to file claims upon becoming unemployed as the result of such mass layoffs.

(b) Except when the result would be inconsistent with the other provisions of this article, as provided in the rules of the ~~board;~~ **department,** the provisions of this article which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the commissioner shall make an appropriate public announcement.

(d) Computations required by the provisions of IC 22-4-2-34(e) shall be made by the ~~commissioner~~ **department** in accordance with regulations prescribed by the United States ~~Secretary~~ **Department** of Labor.

(e) Each employer shall display and maintain in places readily accessible to all employees posters concerning its regulations and shall make available to each such individual at the time the individual becomes unemployed printed benefit rights information furnished by the department.

SECTION 33. IC 22-4-17-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of the individual's status as an insured worker in a form prescribed by the ~~board;~~ **department.** A written notice of the determination of insured status shall be furnished to the individual

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promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) ~~Except as provided in subsection (i);~~ The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the ~~board~~ **department**.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant

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1 left the claimant's work, or may refer such claim to an administrative  
 2 law judge who shall make the initial determination with respect thereto  
 3 in accordance with the procedure in IC 22-4-17-3.

4 (e) In cases where the claimant's benefit eligibility or  
 5 disqualification is disputed, the department shall promptly notify the  
 6 claimant and the employer or employers directly involved or connected  
 7 with the issue raised as to the validity of such claim, the eligibility of  
 8 the claimant for waiting period credit or benefits, or the imposition of  
 9 a disqualification period or penalty, or the denial thereof, and of the  
 10 cause for which the claimant left the claimant's work, of such  
 11 determination and the reasons thereof. Except as otherwise hereinafter  
 12 provided in this subsection regarding parties located in Alaska, Hawaii,  
 13 and Puerto Rico, unless the claimant or such employer, within ten (10)  
 14 days after such notification was mailed to the claimant's or the  
 15 employer's last known address, or otherwise delivered to the claimant  
 16 or the employer, asks a hearing before an administrative law judge  
 17 thereon, such decision shall be final and benefits shall be paid or  
 18 denied in accordance therewith. With respect to notice of disputed  
 19 administrative determination or decision mailed or otherwise delivered  
 20 to the claimant or employer either of whom is located in Alaska,  
 21 Hawaii, or Puerto Rico, unless such claimant or employer, within  
 22 fifteen (15) days after such notification was mailed to the claimant's or  
 23 employer's last known address or otherwise delivered to the claimant  
 24 or employer, asks a hearing before an administrative law judge thereon,  
 25 such decision shall be final and benefits shall be paid or denied in  
 26 accordance therewith. If such hearing is desired, the request therefor  
 27 shall be filed with the ~~commissioner~~ **department** in writing within the  
 28 prescribed periods as above set forth in this subsection and shall be in  
 29 such form as the ~~board~~ **department** may prescribe. In the event a  
 30 hearing is requested by an employer or the department after it has been  
 31 administratively determined that benefits should be allowed to a  
 32 claimant, entitled benefits shall continue to be paid to said claimant  
 33 unless said administrative determination has been reversed by a due  
 34 process hearing. Benefits with respect to any week not in dispute shall  
 35 be paid promptly regardless of any appeal.

36 (f) A person may not participate on behalf of the department in any  
 37 case in which the person is an interested party.

38 (g) Solely on the ground of obvious administrative error appearing  
 39 on the face of an original determination, and within the benefit year of  
 40 the affected claims, the commissioner, or a representative authorized  
 41 by the commissioner to act in the commissioner's behalf, may  
 42 reconsider and direct the deputy to revise the original determination so

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as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

(i) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer ~~that a claim for benefits has been made~~ **of the claimant's current address or physical location.**

SECTION 34. IC 22-4-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. ~~(a) The commissioner~~ **department** shall ~~appoint~~ **employ** one (1) or more administrative law judges to hear and decide disputed claims. ~~Such administrative law judges shall be full-time salaried employees of the department.~~ Administrative law judges ~~appointed~~ **employed** under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

~~(b) The unemployment insurance board may authorize employment of part time administrative law judges for limited periods.~~

SECTION 35. IC 22-4-17-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with rules adopted by the ~~board~~ **department** for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. The testimony at any hearing upon a disputed claim need not be transcribed unless the disputed claim is further appealed. Each party to a hearing before an administrative law judge held under section 3 of this chapter shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the place and time of the hearing and identifying the issues to be decided. If a hearing so scheduled has not commenced within at least sixty (60) minutes of the time for which it was scheduled, then a party involved in the hearing may request a continuance of the hearing. ~~A request for a continuance shall be submitted to the administrative law judge scheduled to conduct the~~

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1 hearing if the administrative law judge is available to receive the  
 2 request; or otherwise may be submitted to the local office in which or  
 3 nearest to which the hearing is scheduled to be held. Upon submission  
 4 of a request for continuance of a hearing under circumstances provided  
 5 in this section, the continuance shall be granted unless the party  
 6 requesting the continuance was responsible for the delay in the  
 7 commencement of the hearing as originally scheduled. In the latter  
 8 instance, the continuance shall be discretionary with the administrative  
 9 law judge. Testimony or other evidence introduced by a party at a  
 10 hearing before an administrative law judge or the review board that  
 11 another party to the hearing:

12 (1) is not prepared to meet; and

13 (2) by ordinary prudence could not be expected to have  
 14 anticipated;

15 shall be good cause for continuance of the hearing and upon motion  
 16 such continuance shall be granted.

17 SECTION 36. IC 22-4-17-7 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In the discharge of  
 19 the duties imposed by this article, any member of the board, **the**  
 20 **department**, the review board, or an administrative law judge, or any  
 21 duly authorized representative of any of them, shall have power to  
 22 administer oaths and affirmations, take depositions, certify to official  
 23 acts, and issue and serve subpoenas to compel the attendance of  
 24 witnesses and the production of books, papers, correspondence,  
 25 memoranda, and other records deemed necessary as evidence in  
 26 connection with the disputed claim or the administration of this article.

27 SECTION 37. IC 22-4-17-8 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. In case of contumacy  
 29 by, or refusal to obey a subpoena issued to, any person **in the**  
 30 **administration of this article**, any court of this state within the  
 31 jurisdiction of which the inquiry is carried on or within the jurisdiction  
 32 of which said person guilty of contumacy or refusal to obey is found or  
 33 resides or transacts business, upon application by the board, **the**  
 34 **department**, or the review board or a duly authorized representative of  
 35 ~~either~~, **any of these**, shall have jurisdiction to issue to such person an  
 36 order requiring such person to appear before the board, **the**  
 37 **department**, the review board, an administrative law judge, or the duly  
 38 authorized representative of any of these, there to produce evidence if  
 39 so ordered, or there to give testimony touching the matter in question  
 40 or under investigation. Any failure to obey such order of the court may  
 41 be punished by said court as a contempt thereof.

42 SECTION 38. IC 22-4-17-8.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. (a) As used in this  
 2 section, "interested party" has the meaning set forth in 646  
 3 IAC 3-12-1.

4 (b) An administrative law judge ~~and~~ or the review board may hold  
 5 a hearing under this chapter by telephone if any of the following  
 6 conditions exist:

7 (1) The claimant or the employer is not located in Indiana.

8 (2) ~~All of the following conditions exist:~~

9 (A) ~~The claimant and the employer are located in Indiana.~~

10 (B) ~~The claimant or the employer~~ An interested party  
 11 requests without an objection being filed as provided in 646  
 12 IAC 3-12-21 that the hearing be held by telephone.

13 (C) ~~The administrative law judge or the review board~~  
 14 ~~determines that the distance between the location of the~~  
 15 ~~claimant and the location of the employer is so great that a~~  
 16 ~~hearing held by telephone is justified under the circumstances.~~

17 (3) ~~A~~ An interested party cannot appear in person because of an  
 18 illness or injury to the party.

19 (4) In the case of a hearing before an administrative law  
 20 judge, the administrative law judge determines without any  
 21 interested party filing an objection as provided in 646  
 22 IAC 3-12-21 that a hearing by telephone is proper and just.

23 (4) (5) In the case of a hearing before the review board, the issue  
 24 to be adjudicated does not require both parties to be present.

25 (5) (6) In the case of a hearing before the review board, the  
 26 unemployment insurance review board has determined that a  
 27 hearing by telephone is proper and just.

28 SECTION 39. IC 22-4-17-9 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. No person shall be  
 30 excused from attending and testifying or from producing books, papers,  
 31 correspondence, memoranda, and other records before the board, **the**  
 32 **department**, the review board, an administrative law judge or the duly  
 33 authorized representative of any of them in obedience to the subpoena  
 34 of any of them in any cause or proceeding before any of them on the  
 35 ground that the testimony or evidence, documentary or otherwise,  
 36 required of ~~him~~ **the person** may tend to incriminate ~~him~~ **the person** or  
 37 subject ~~him~~ **the person** to a penalty or forfeiture, but no individual  
 38 shall be prosecuted or subjected to any penalty or forfeiture for or on  
 39 account of any transaction, matter, or thing concerning which ~~he~~ **the**  
 40 **person** is compelled after having claimed ~~his~~ **the** privilege against  
 41 self-incrimination to testify or produce evidence, documentary or  
 42 otherwise, except that such individual so testifying shall not be exempt

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1 from prosecution and punishment for perjury committed in so  
 2 testifying. Any testimony or evidence submitted in due course before  
 3 the board, **the department**, the review board, an administrative law  
 4 judge, or any duly authorized representative of any of them shall be  
 5 deemed a communication presumptively privileged with respect to any  
 6 civil action except actions to enforce the provisions of this article.

7 SECTION 40. IC 22-4-17-14 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) This section  
 9 applies to notices given under sections 2, 3, 11, and 12 of this chapter.  
 10 This section does not apply to rules adopted by the board **or the**  
 11 **department**, unless specifically provided.

12 (b) As used in this section, "notices" includes mailings of notices,  
 13 determinations, decisions, orders, motions, or the filing of any  
 14 document with the appellate division or review board.

15 (c) If a notice is served through the United States mail, three (3)  
 16 days must be added to a period that commences upon service of that  
 17 notice.

18 (d) The filing of a document with the appellate division or review  
 19 board is complete on the earliest of the following dates that apply to the  
 20 filing:

21 (1) The date on which the document is delivered to the appellate  
 22 division or review board.

23 (2) The date of the postmark on the envelope containing the  
 24 document if the document is mailed to the appellate division or  
 25 review board by the United States Postal Service.

26 (3) The date on which the document is deposited with a private  
 27 carrier, as shown by a receipt issued by the carrier, if the  
 28 document is sent to the appellate division or review board by a  
 29 private carrier.

30 SECTION 41. IC 22-4-18-2 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) The Indiana  
 32 unemployment insurance board is created. The board is responsible for  
 33 **the oversight of** the unemployment insurance program. The board  
 34 shall report annually to the governor on the status of unemployment  
 35 insurance together with recommendations for maintaining the solvency  
 36 of the unemployment insurance benefit fund. The department staff shall  
 37 provide support to the board. The unemployment insurance board shall  
 38 consist of nine (9) members, who shall be appointed by the governor,  
 39 as follows:

40 (1) Four (4) members shall be appointed as representatives of  
 41 labor and its interests.

42 (2) One (1) member shall be appointed as a representative of the

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1 state and its interest and of the public at large.

2 (3) Two (2) members shall be appointed as representatives of the  
3 large employers of the state.

4 (4) Two (2) members shall be appointed as representatives of the  
5 independent merchants and small employers of the state.

6 All appointments shall be made for terms of four (4) years. All  
7 appointments to full terms or to fill vacancies shall be made so that all  
8 terms end on March 31.

9 (b) Every Indiana unemployment insurance board member so  
10 appointed shall serve until a successor shall have been appointed and  
11 qualified. Before entering upon the discharge of official duties, each  
12 member of the board shall take and subscribe to an oath of office,  
13 which shall be filed in the office of the secretary of state. Any vacancy  
14 occurring in the membership of the board for any cause shall be filled  
15 by appointment by the governor for the unexpired term. The governor  
16 may, at any time, remove any member of the board for misconduct,  
17 incapacity, or neglect of duty. Each member of the board shall be  
18 entitled to receive as compensation for the member's services the sum  
19 of one hundred dollars (\$100) per month for each and every month  
20 which ~~he~~ **the member** devotes to the actual performance of the  
21 member's duties, as prescribed in this article, but the total amount of  
22 such compensation shall not exceed the sum of twelve hundred dollars  
23 (\$1,200) per year. In addition to the compensation hereinbefore  
24 prescribed, each member of the board shall be entitled to receive the  
25 amount of traveling and other necessary expenses actually incurred  
26 while engaged in the performance of official duties.

27 (c) The board ~~shall~~ **may** hold one (1) regular meeting each month  
28 and such called meetings as may be deemed necessary **by the**  
29 **commissioner or the board**. The April meeting shall be known as the  
30 annual meeting. Five (5) members of the board constitute a quorum for  
31 the transaction of business. At its first meeting and at each annual  
32 meeting held thereafter, the board shall organize by the election of a  
33 president and vice president from its own number, each of whom,  
34 except those first elected, shall serve for a term of one (1) year and  
35 until a successor is elected.

36 SECTION 42. IC 22-4-19-1 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~It shall be the duty~~  
38 ~~of The board to administer the provisions of this article and, in addition~~  
39 ~~to all other powers conferred on the board;~~ it shall have the power and  
40 authority to adopt, amend, or rescind such rules and regulations to  
41 employ such persons, make such expenditures, require such reports,  
42 make such investigations and take such other action as it may deem

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necessary or suitable for the proper administration of this article. All rules and regulations issued under the provisions of this article shall be effective upon publication in the manner hereinafter provided and shall have the force and effect of law. The board may prescribe the extent, if any, to which any rule or regulation so issued or legal interpretation of this article shall be with or without retroactive effect. Whenever the board believes that a change in contribution or benefit rates will become necessary to protect the solvency of the **unemployment insurance benefit** fund, it shall promptly so inform the governor and the general assembly, and make recommendations with respect thereto.

SECTION 43. IC 22-4-19-6, AS AMENDED BY P.L.4-2005, SECTION 131, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

- (1) open to inspection; and
- (2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The ~~commissioner~~, **department**, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax, the skills 2016 assessment under IC 22-4-10.5-3, or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The ~~commissioner~~ **department** may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The ~~commissioner~~ **department** may release the following information:

- (1) Summary statistical data may be released to the public.

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(2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:

(A) The purpose of conducting a survey.

(B) The purpose of aiding the officers or employees of the Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department.

(3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency only for aiding the employees of the budget agency in forecasting tax revenues.

(4) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:

(A) department of state revenue; or

(B) state or local law enforcement agencies;

only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes.

(e) The ~~commissioner~~ **department** may make information available under subsection (d)(1), (d)(2), or (d)(3) only:

(1) if:

(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or

(B) there is an agreement that the employer specific information released to the Indiana economic development corporation or the budget agency will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and

(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.

(f) In addition to the confidentiality provisions of subsection (b), **the fact that a claim has been made under IC 22-4-15-1(c)(8) and any**

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information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence ~~is~~ **are** confidential. ~~This~~ Information **concerning the claimant's current address or physical location** shall not be disclosed to the employer or any other person. Disclosure is subject to the following **additional** restrictions:

(1) The claimant must be notified before any release of information.

(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.

(g) An employee:

(1) of the department who recklessly violates subsection (a), (c), (d), (e), or (f); or

(2) of any governmental entity listed in subsection (d)(4) ~~of this chapter~~ who recklessly violates subsection (d)(4); ~~of this chapter~~; commits a Class B misdemeanor.

(h) An employee of the Indiana economic development corporation or the budget agency who violates subsection (d) or (e) commits a Class B misdemeanor.

**(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential.**

SECTION 44. IC 22-4-19-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. In any case where an employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, shall fail or refuse upon demand by the board, **the department**, the review board, or an administrative law judge, or the duly authorized representative of any of them, to produce or permit the examination or copying of any book, paper, account, record, or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any contribution report or the skills 2016 training assessment under IC 22-4-10.5-3, or for the purpose of making a report as required by this article where none has been made, then and in that event the board, **the department**, the review board, or the administrative law judge, or the duly authorized representative of any of them, may by issuance of a subpoena require the attendance of such employing unit, or any officer, member, or agent thereof or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena.

SECTION 45. IC 22-4-19-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) The board, **the**

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1 **department**, the review board, or the administrative law judge, or the  
 2 duly authorized representative of any of them, at any such hearing shall  
 3 have power to administer oaths to any such person or persons. When  
 4 any person called as a witness by such subpoena, duly signed, and  
 5 served upon ~~him~~ **the witness** by any duly authorized person or by the  
 6 sheriff of the county of which such person is a resident, or wherein is  
 7 located the principal office of such employing unit or wherein such  
 8 records are located or kept, shall fail to obey such subpoena to appear  
 9 before the board, **the department**, the review board, or the  
 10 administrative law judge, or the authorized representative of any of  
 11 them, or shall refuse to testify or to answer any questions, or to produce  
 12 any book, record, paper, or other data when notified and demanded so  
 13 to do, such failure or refusal shall be reported to the attorney general  
 14 for the state of Indiana who shall thereupon institute proceedings by the  
 15 filing of a petition in the name of the state of Indiana on the relation of  
 16 the board, in the circuit court or superior or other court of competent  
 17 jurisdiction of the county where such witness resides, or wherein such  
 18 records are located or kept, to compel obedience of and by such  
 19 witness.

20 (b) Such petition shall set forth the facts and circumstances of the  
 21 demand for and refusal or failure to permit the examination or copying  
 22 of such records or the failure or refusal of such witness to testify in  
 23 answer to such subpoena or to produce the records so required by such  
 24 subpoena. Such court, upon the filing and docketing of such petition  
 25 shall thereupon promptly issue an order to the defendants named in  
 26 said petition, to produce forthwith in such court or at a place in such  
 27 county designated in such order, for the examination or copying by the  
 28 board, **the department**, the review board, an administrative law judge,  
 29 or the duly authorized representative of any of them, the records,  
 30 books, or documents so described and to testify concerning matters  
 31 described in such petition. Unless such defendants to such petition  
 32 shall appear in said court upon a day specified in such order, which  
 33 said day shall be not more than ten (10) days after the date of issuance  
 34 of such order, and offer, under oath, good and sufficient reasons why  
 35 such examination or copying should not be permitted, or why such  
 36 subpoena should not be obeyed, such court shall thereupon deliver to  
 37 the board, **the department**, the review board, **the** administrative law  
 38 judge, or representative of any of them, for examination or copying, the  
 39 records, books and documents so described in said petition and so  
 40 produced in such court and shall order said defendants to appear in  
 41 answer to the subpoena, and to testify concerning the subject matter of  
 42 the inquiry. Any employing unit, or any officer, member, or agent

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thereof, or any other persons having possession of the records thereof who shall willfully disobey such order of the court after the same shall have been served upon him, shall be guilty of indirect contempt of such court from which such order shall have issued and may be adjudged in contempt of said court and punished therefor as provided by law.

SECTION 46. IC 22-4-22-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The commissioner is authorized to enter into reciprocal agreements with the proper agencies under the laws of other states or jurisdictions or of the United States, which agreements shall become effective after filing with the secretary of state ~~pursuant to IC 22-4-19-2~~, **in accordance with rules adopted by the department under IC 4-22-2**, by the terms of which agreements:

(1) potential rights to benefits accumulated under the unemployment compensation laws of one (1) or more states or jurisdictions or of the United States, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable to all affected interests and which will not result in any substantial loss to the fund; and

(2) wages or services in employment subject to an unemployment compensation law of another state or of the United States shall be deemed to be wages in employment for employers for the purpose of determining an individual's rights to unemployment compensation benefits under this article, and wages in employment for employers as defined in this article shall be deemed to be wages or services on the basis of which unemployment compensation under the law of another state or of the United States is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the unemployment insurance benefit fund for such of the unemployment compensation benefits paid under this part upon the basis of such wages or services, and provisions for reimbursements from the unemployment insurance benefit fund for such of the compensation paid under such other law upon the basis of wages for employment as defined in this article as the commissioner finds will be fair and reasonable to all affected interests.

SECTION 47. IC 22-4-22-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. In order that the administration of this article and the unemployment ~~compensation~~ **insurance** laws of other states or jurisdictions or of the United States

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1 of America will be promoted by cooperation between this state and  
 2 such other states or jurisdictions or the appropriate agencies of the  
 3 United States in exchanging services and making available facilities  
 4 and information, the board ~~is~~ **and the department are** authorized to  
 5 make such investigations, secure and transmit such information, make  
 6 available such services and facilities, and exercise such of the other  
 7 powers provided in this article with respect to the administration of this  
 8 article as ~~it deems~~ **deemed** necessary or appropriate to facilitate the  
 9 administration of any unemployment ~~compensation~~ **insurance** law and  
 10 in like manner to accept and utilize information, services, and facilities  
 11 made available to this state by the agency or jurisdiction charged with  
 12 the administration of any such other unemployment ~~compensation~~  
 13 **insurance** law.

14 SECTION 48. IC 22-4-22-6 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) On request of an  
 16 agency which administers an employment security law of another state  
 17 or of a foreign government, and which has found in accordance with  
 18 the provisions of such law that a claimant is liable to repay benefits  
 19 received under such law by reason of having knowingly made a false  
 20 statement or misrepresentation of a material fact, or who has knowingly  
 21 failed to disclose a material fact, with respect to a claim taken in this  
 22 state as an agent for such agency, the ~~board~~ **department** may collect  
 23 from such claimant for the liable state the amount of such benefits to  
 24 be refunded to such agency.

25 (b) In any case in which under this subsection a claimant is liable to  
 26 repay any amount to the agency of another state, or of a foreign  
 27 government, such amounts may be collected without interest by civil  
 28 action in the name of the ~~board~~ **department** acting as agent for such  
 29 agency.

30 SECTION 49. IC 22-4-23-1 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) The department  
 32 shall establish and maintain free public employment and training  
 33 offices in such number and in such places as may be necessary for the  
 34 proper administration of this article and for the purpose of performing  
 35 such duties as are within the purview of 29 U.S.C. 49 et seq. and 38  
 36 U.S.C. 2000 through 2014 and any amendments thereto. The provisions  
 37 of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014 are hereby  
 38 declared accepted by the state in conformity with the terms of 29  
 39 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014, and the state  
 40 commits itself to the observation of and compliance with the  
 41 requirements of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014,  
 42 and the department is constituted the agency of the state for all

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purposes of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014. All duties and powers conferred upon any other department, agency, or officer of the state relating to the establishment, maintenance, and operation of free public employment offices shall be vested in the ~~board~~ **department**. The ~~board~~ **department** being charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014, shall be and is authorized and empowered to do and perform all things necessary to secure to this state the benefits of 29 U.S.C. 49 et seq. and 38 U.S.C. 2000 through 2014. The department may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

(b) The department may do all acts and things necessary or proper to carry out the powers expressly granted under this article.

SECTION 50. IC 22-4-25-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2. (a) As used in this section, "fund" refers to the special employment and training services fund created under section 1 of this chapter.**

**(b) The commissioner may allocate an amount not to exceed two million dollars (\$2,000,000) annually from the fund to establish reemployment training accounts to provide training and reemployment services to department employees dislocated by:**

- (1) a reduction of funding for;**
- (2) a centralization or decentralization of; or**
- (3) the implementation of a more efficient technology or service delivery method in connection with;**

**the programs and services provided under this article.**

SECTION 51. IC 22-4-26-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.** The fund shall be administered exclusively for the purpose of this article, and money withdrawn therefrom, except for deposit in the unemployment insurance benefit fund and for refund, as provided in this article, and except for amounts credited to the account of this state pursuant to 42 U.S.C. 1103, as amended, which shall be used exclusively as provided in section 5 of this chapter, shall be used solely for the payment of benefits. Payment of benefits and refunds shall be made in accordance with the rules prescribed by the ~~board~~ **department** consistent with the provisions of this article. Withdrawals from the fund except as provided in section 5 of this chapter shall not be subject to any provisions of law requiring specific appropriations or other formal

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release by state officers of money in their custody.

SECTION 52. IC 22-4-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. If the employing unit protests such assessment, upon written request it shall have an opportunity to be heard, and such hearing shall be conducted by a liability administrative law judge pursuant to the provisions of IC 22-4-32-1 through IC 22-4-32-15. After the hearing the liability administrative law judge shall immediately notify the employing unit in writing of the finding, and the assessment, if any, so made shall be final, in the absence of judicial review proceedings as provided in this article, ~~fifteen (15)~~ **thirty (30)** days after such notice ~~of appeal~~ is issued.

SECTION 53. IC 22-4-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The finality of such decision of the liability administrative law judge may be stayed for a period of thirty (30) days from the date of service of notice on the ~~board of intention to seek a judicial review~~ **department of the appeal** of said decision as provided in this article. ~~provided~~ Such notice is **must be** served within ~~fifteen (15)~~ **thirty (30)** days after notice of the decision of the liability administrative law judge is issued. If judicial review proceedings are not instituted within the time provided for in this article, the finality of said decision shall not be further stayed.

SECTION 54. IC 22-4-30-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Any employer against whom contributions shall be assessed as provided in this article shall be restrained and enjoined upon the order of the ~~board~~ **department** by proper proceedings instituted in the name of the state of Indiana, brought by the attorney general for the state of Indiana ~~and/or or~~ any prosecuting attorney at the request of the ~~board~~ **department**, from engaging ~~and/or or~~ continuing in business in this state until the contributions, interest, penalties, and damages shall have been paid and until such employer shall have complied with the provisions of this article; and such attorneys shall prosecute violations of criminal provisions of this article upon request of the ~~board~~ **department**.

SECTION 55. IC 22-4-31-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** If any contributions, interest, penalties, or damages assessed under this article, or any portion thereof, be not paid within one hundred twenty (120) days after the same is found to be due, a receiver may be appointed by the circuit or superior court of the county in which such employer resides or in which he is doing business or in which its

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1 resident agent is located in a proceeding requesting such appointment  
 2 instituted against the said employer in the name of the state of Indiana,  
 3 brought by the attorney general for the state of Indiana at the request of  
 4 the ~~board~~ **department**.

5 (b) The court shall appoint a receiver when it finds that the  
 6 employer has not paid the contributions or amounts due imposed by  
 7 this article within one hundred twenty (120) days after the same is  
 8 found to be due, and that contributions, interest, penalties, or damages,  
 9 or any portion thereof, is unpaid and delinquent. Such cause for the  
 10 appointment of a receiver shall be in addition to all other causes or  
 11 grounds provided by law for the appointment of receivers and shall be  
 12 in addition to all other methods for the enforcement of this article.

13 (c) Each such receiver shall give bond and be sworn as provided for  
 14 by law and shall have power under the control of the court to bring and  
 15 defend actions, to take and keep possession of the property of the  
 16 employer, to receive all funds and collect any debts due to the  
 17 employer, in the receiver's name, and generally to do such acts  
 18 respecting the property as the court shall authorize, and shall have all  
 19 the powers granted to, or shall be subject to all the duties of, receivers  
 20 under the laws of this state.

21 SECTION 56. IC 22-4-31-6 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) If, after due  
 23 notice, any employing unit defaults in the payment of any contributions  
 24 or other money payments required by this article, the amount due may  
 25 be collected by civil action in the name of the state of Indiana on the  
 26 relation of the ~~commissioner~~ **department**. Such civil action is not to  
 27 be considered as the exclusive method for collection of the  
 28 contributions or money payments but is in addition to the method  
 29 provided in IC 22-4-29-2 through IC 22-4-29-12 and is to be brought  
 30 only in such cases as the ~~board~~ **department** may deem advisable in the  
 31 interest of necessity and convenience.

32 (b) Unless the employing unit prevails in a civil action brought  
 33 under this chapter, the court may award costs, including reasonable  
 34 attorney's fees, incurred by the state in bringing the action.

35 SECTION 57. IC 22-4-31-7 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. It is expressly  
 37 provided that the foregoing remedies shall be cumulative and shall be  
 38 in addition to all other existing remedies, and that no action taken by  
 39 the ~~board~~ **department** or its duly authorized representative, the  
 40 attorney-general for the state of Indiana, or any other officer shall be  
 41 construed to be an election on the part of the state or any of its officers  
 42 to pursue any remedy to the exclusion of any other remedy.

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SECTION 58. IC 22-4-32-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A **liability administrative law judge shall hear** all matters pertaining to:

- (1) the assessment of contributions, penalties, and interest;
- (2) which accounts, if any, benefits paid, or finally ordered to be paid, should be charged;
- (3) successorships, and related matters arising therefrom, including but not limited to:

- (A) the transfer of accounts; ~~and~~

- (B) the determination of rates of contribution; and

- (C) determinations under IC 22-4-11.5; and**

- (4) claims for refunds of contributions, skills 2016 training assessments, or adjustments thereon in connection with subsequent contribution payments and skills 2016 training assessments;

~~shall be heard by a liability administrative law judge upon proper application for such hearing; for which an employing unit has timely filed a protest under section 4 of this chapter.~~

SECTION 59. IC 22-4-32-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The proceedings before a liability administrative law judge shall be conducted in accordance with such rules of practice and procedure as the ~~board~~ **department** may ~~prescribe~~ **adopt** under its rulemaking authority ~~as contained in IC 22-4-19-2; under IC 22-4-18-1.~~ Any person representing any interested party in the prosecution or defense of any proceedings before a liability administrative law judge must be admitted to practice law in the courts of the state of Indiana, except that persons admitted to practice before the courts of other states may on special order be permitted to appear in any proceeding before the liability administrative law judge. ~~provided, however, that nothing in~~ This section shall **not** be ~~so~~ construed ~~as~~ to prohibit an interested party from electing to be heard in his own cause without counsel.

SECTION 60. IC 22-4-32-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. An employing unit shall have fifteen (15) **calendar days, beginning on the date an initial determination is mailed to the employing unit,** within which to protest in writing ~~an initial determinations determination~~ **an initial determination** of the ~~commissioner department~~ with respect to:

- (1) the assessments of contributions, penalties, and interest;
- (2) the transfer of charges from an employer's account;
- (3) merit rate calculations;
- (4) successorships;

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(5) the denial of claims for refunds and adjustments; and  
 (6) a protest arising from an initial determination of the director relating to any matter listed in subdivisions (1) through (5):

**(6) a determination under IC 22-4-11.5.**

The fifteen (15) day period shall commence with the day following the day upon which the initial determination or denial of claim for refund or adjustment is mailed to the employing unit.

SECTION 61. IC 22-4-32-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. After the hearing the liability administrative law judge shall as soon as practicable notify the interested parties in writing of the finding and decision of the liability administrative law judge, which shall become final ~~fifteen (15)~~ **thirty (30)** days thereafter in the absence of ~~judicial review proceedings~~ **the filing of a notice of appeal** as provided in this chapter.

SECTION 62. IC 22-4-32-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. A notice of ~~intention to institute judicial review proceedings~~ **appeal** shall be a ~~prerequisite to such action~~, shall be served on the adverse party at any time before ~~said the~~ decision of the liability administrative law judge becomes final, and shall stay the finality of ~~said the~~ decision for ~~a period of~~ thirty (30) days from the service of such notice. ~~and~~ If such appeal is perfected, further proceedings shall be stayed pending the final determination of said appeal. ~~provided; further, that~~ If an appeal from ~~such the~~ decision of the liability administrative law judge is not perfected within the time provided for by this article, no action or proceeding shall be further stayed.

SECTION 63. IC 22-4-32-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. The ~~board;~~ **department**, by rule, may require the appellant to deposit with the department an amount sufficient to pay the actual costs of preparing the transcript of the record of the proceedings before the liability administrative law judge before preparing the same.

SECTION 64. IC 22-4-32-19, AS AMENDED BY P.L.202-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 19. **(a) The department may grant an application for adjustment or refund, make an adjustment or refund, or set off a refund as follows:**

**(1)** ~~At any time within~~ **Not later than** four (4) years after the date upon which any contributions, skills 2016 training assessments under IC 22-4-10.5-3, or interest thereon were paid, an employing unit which has paid such contributions, skills 2016 training assessments, or interest thereon may make application for

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1        **an adjustment or** a refund of such contributions, skills 2016  
 2        training assessments, or an adjustment thereon in connection with  
 3        subsequent contribution payments or skills 2016 training  
 4        assessments. The ~~commissioner~~ **department** shall thereupon  
 5        determine whether or not such contribution or skills 2016 training  
 6        assessment, or interest or any portion thereof was erroneously  
 7        paid or wrongfully assessed. ~~and notify the employing unit in~~  
 8        ~~writing of its decision.~~

9        (b) Such decision shall constitute the initial determination referred  
 10       to in section 4 of this chapter and shall be subject to hearing and review  
 11       as provided in sections 1 through 15 of this chapter.

12       ~~(c) (2) The commissioner~~ **department** may grant such application  
 13       in whole or in part and may allow the employing unit to make an  
 14       adjustment, ~~thereof~~ without interest, in connection with  
 15       subsequent contribution payments or skills 2016 training  
 16       assessments, ~~if such adjustment cannot be made, the~~  
 17       ~~commissioner may or~~ refund such amounts, without interest, from  
 18       the fund. ~~For like cause and within the same period,~~ Adjustments  
 19       or refund may be made on the commissioner's own initiative.

20       (3) Any adjustments or refunds of interest or penalties collected  
 21       for contributions due under IC 22-4-10-1 shall be charged to and  
 22       paid from the special employment and training services fund  
 23       created by IC 22-4-25. Any adjustments or refunds of interest or  
 24       penalties collected for skills 2016 training assessments due under  
 25       IC 22-4-10.5-3 shall be charged to and paid from the skills 2016  
 26       training fund established by IC 5-28-27-3.

27       (4) **The department may set off any refund available to an**  
 28       **employer under this section against any delinquent**  
 29       **contributions, payments in lieu of contributions, skills 2016**  
 30       **training assessments, and the interest and penalties, if any,**  
 31       **related to the delinquent payments and assessments.**

32       (b) Any decision by the department to:

- 33       (1) grant an application for adjustment or refund;
- 34       (2) make an adjustment or refund on its own initiative; or
- 35       (3) set off a refund;

36       **constitutes the initial determination referred to in section 4 of this**  
 37       **chapter and is subject to hearing and review as provided in**  
 38       **sections 1 through 15 of this chapter.**

39       ~~(d)~~ (c) If any assessment has become final by virtue of a decision of  
 40       a liability administrative law judge with the result that no proceeding  
 41       for judicial review as provided in this article was instituted, no refund  
 42       or adjustment with respect to such assessment shall be made.

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SECTION 65. IC 22-4-32-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. (a) This section applies to notices given under sections 4, 7, 8, and 9 of this chapter.

(b) As used in this section, "notices" includes mailings pertaining to:

(1) the assessment of contributions, skills 2016 training assessments under IC 22-4-10.5-3, penalties, and interest;

(2) the transfer of charges from an employer's account;

(3) successorships and related matters arising from successorships;

(4) claims for refunds and adjustments;

**(5) violations under IC 22-4-11.5;**

~~(5)~~ **(6)** decisions; and

~~(6)~~ **(7)** notices of intention to appeal or seek judicial review.

(c) If a notice under this chapter is served through the United States Postal Service, three (3) days must be added to a period that commences upon service of that notice.

(d) The filing of a document with the ~~appellate unemployment insurance appeals~~ division or review board is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ~~appellate unemployment insurance appeals~~ division or review board.

(2) The date of the postmark on the envelope containing the document if the document is mailed to the ~~appellate unemployment insurance appeals~~ division or review board by the United States Postal Service.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ~~appellate unemployment insurance appeals~~ division or review board by a private carrier.

SECTION 66. IC 22-4-34-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. A person who knowingly fails to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, in obedience to a subpoena of the board, **the department**, the review board, an administrative law judge, or any duly authorized representative of any of them, commits a Class C misdemeanor. Each day a violation continues constitutes a separate offense.

SECTION 67. IC 22-4-35-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. All criminal actions for violations of this article shall be prosecuted by the prosecuting attorney of any county, or with the assistance of the attorney general **or a United States attorney**, if requested by the commissioner, in which

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the employer has a place of business or the alleged violator resides.

SECTION 68. IC 22-4-37-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. It is declared to be the purpose of this article to secure to the state of Indiana and to employers and employees therein all the rights and benefits which are conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 et seq., and the amendments thereto. Whenever the ~~board~~ **department** shall find it necessary, it shall have power to formulate rules after public hearing and opportunity to be heard whereof due notice is given as is provided in this article for the adoption of rules pursuant to ~~IC 22-4-19-2~~, **IC 4-22-2**, and with the approval of the governor of Indiana, to adopt such rules as shall effectuate the declared purposes of this article.

SECTION 69. IC 22-4-37-3, AS AMENDED BY P.L.214-2005, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Should:

(1) the Congress of the United States amend, repeal, or authorize the implementation of a demonstration project under 29 U.S.C. 49 et seq., 26 U.S.C. 3301 through 3311, 42 U.S.C. 301 et seq., or 26 U.S.C. 3101 through 3504, or any statute or statutes supplemental to or in lieu thereof or any part or parts of said statutes, or should any or all of said statutes or any part or parts thereof be held invalid, to the end and with such effect that appropriations of funds by the said Congress and grants thereof to the state for the payment of costs of administration of the department ~~of workforce development~~ are or no longer shall be available for such purposes; ~~or should~~

(2) the primary responsibility for the administration of 26 U.S.C. 3301 through 26 U.S.C. 3311 be transferred to the state as a demonstration project authorized by Congress; ~~or should~~

(3) employers in Indiana subject to the payment of tax under 26 U.S.C. 3301 through 3311 be granted full credit upon such tax for contributions or taxes paid to the department; ~~of workforce development~~

then, beginning with the effective date of such change in liability for payment of such federal tax and for each year thereafter, the normal contribution rate under this article shall be established by the department ~~of workforce development~~ and may not exceed three and one-half percent (3.5%) per year of each employer's payroll subject to contribution. With respect to each employer having a rate of contribution for such year pursuant to terms of IC 22-4-11-2(b)(2)(A),

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1 IC 22-4-11-2(b)(2)(B), **IC 22-4-11-2(c)**, IC 22-4-11-3, ~~and~~  
 2 IC 22-4-11-3.3, **and IC 22-4-11.5**, to the rate of contribution, as  
 3 determined for such year in which such change occurs, shall be added  
 4 not more than eight-tenths percent (0.8%) as prescribed by the  
 5 department. ~~of workforce development.~~

6 (b) The amount of the excess of tax for which such employer is or  
 7 may become liable by reason of this section over the amount which  
 8 such employer would pay or become liable for except for the provisions  
 9 of this section, together with any interest or earnings thereon, shall be  
 10 paid and transferred into the employment and training services  
 11 administration fund to be disbursed and paid out under the same  
 12 conditions and for the same purposes as is other money provided to be  
 13 paid into such fund. If the commissioner shall determine that as of  
 14 January 1 of any year there is an excess in said fund over the money  
 15 and funds required to be disbursed therefrom for the purposes thereof  
 16 for such year, then and in such cases an amount equal to such excess,  
 17 as determined by the commissioner, shall be transferred to and become  
 18 part of the unemployment insurance benefit fund, and such funds shall  
 19 be deemed to be and are hereby appropriated for the purposes set out  
 20 in this section.

21 SECTION 70. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 22 JULY 1, 2006]: IC 22-4-16-1; IC 22-4-19-2; IC 22-4-19-3.

23 SECTION 71. **An emergency is declared for this act.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 321, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 321 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 2.

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 SENATE MOTION

Madam President: I move that Senator Harrison be added as coauthor of Senate Bill 321.

KRUSE

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 SENATE MOTION

Madam President: I move that Senate Bill 321 be amended to read as follows:

Page 12, delete lines 7 through 42.

Page 13, delete lines 1 through 39.

Page 15, line 20, after "commissioner" insert "**department**".

Page 15, line 20, reset in roman "shall".

Page 15, line 20, delete "department may".

Page 18, line 23, delete "States or" and insert "**States;**".

Page 18, delete line 24.

Page 18 line 36, delete "one" and insert "**one-half**".

Page 18 line, 36, delete "(1%)" and insert "**(0.5%)**".

Page 20, line 31, delete "an individual forfeits any wage".

Page 20, delete line 32.

Page 20, line 33, delete "otherwise be payable to the individual".

Page 20, line 33, before "individual knowingly:" delete "the" and insert "**an**".

Page 20, line 39, delete "." and insert ", **the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for the period in which the failure to disclose or falsification occurs.**".

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Page 26, reset in roman lines 39 through 40.

Page 26, line 41, reset in roman "shall not notify the employer".

Page 26, line 41, after "made." insert "**of the claimant's current address or physical location.**".

Page 33, line 30, delete "information" and insert "Information **concerning the claimant's current address or physical location**".

Page 33, line 30, reset in roman "shall not be disclosed to the employer or any other person".

Page 44, between lines 38 and 39, begin a new paragraph and insert: "SECTION 64. IC 22-4-16-1 IS REPEALED [EFFECTIVE JULY 1, 2006].".

Renumber all SECTIONS consecutively.

(Reference is to SB 321 as printed January 20, 2006.)

KRUSE

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure reports that pursuant to Senate Rule 33(c), the following technical correction is to be made to Engrossed Senate Bill 321.

Page 19, line 5, delete "by" and insert "**be**".

(Reference is to ESB 321 as reprinted January 25, 2006.)

GARTON

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment and Labor, to which was referred Senate Bill 321, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-28-27-3, AS ADDED BY P.L.202-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. (a) The skills 2016 training fund is established to do the following:

(1) Administer the costs of the skills 2016 training program

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established under IC 22-4-10.5.

(2) Undertake any program or activity that furthers the purposes of IC 22-4-10.5.

(3) Refund skills 2016 training assessments erroneously collected and deposited in the fund.

(b) The money in the fund shall be allocated as follows:

(1) An amount to be determined annually shall be set aside for the payment of refunds from the fund.

(2) The remainder of the money in the fund shall be allocated to employers or consortiums for incumbent worker training grants that enable workers to obtain recognizable credentials or certifications and transferable employment skills that improve employer competitiveness.

(c) Special consideration shall be given to the state educational institution established under IC 20-12-61 to be the provider of the training funded under this chapter whenever the state educational institution:

(1) meets the identified training needs of an employer or a consortium with an existing credentialing or certification program; and

(2) is the most cost effective provider.

(d) For the incumbent worker training grants described in subsection (b), the department of workforce development shall do the following:

(1) Provide grant applications to interested employers and consortiums.

(2) Accept completed applications for the grants.

(3) Obtain all information necessary or appropriate to determine whether an applicant qualifies for a grant, including information concerning:

(A) the applicant;

(B) the training to be offered;

(C) the training provider; and

(D) the workers to be trained.

(4) Prepare summaries or other reports to assist the secretary of commerce in reviewing the grant applications.

(e) The department of workforce development shall forward the grant applications and other information collected or received by the department under subsection (d) to the secretary of commerce who shall allocate the money in the fund in accordance with subsections (b) and (c), after considering the information provided by the department of workforce development.

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(f) The corporation shall enter into an agreement with the department of workforce development for the department of workforce development to administer the fund using money appropriated from the fund.

(g) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(h) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(i) The fund consists of the following:

- (1) Assessments deposited in the fund.
- (2) Earnings acquired through the use of money belonging to the fund.
- (3) Money deposited in the fund from any other source.
- (4) Interest and penalties collected.

(j) Any balance in the fund does not lapse but is available continuously to the corporation for expenditures for the program established under IC 22-4-10.5 consistent with this chapter, after considering any information concerning an expenditure provided by the department of workforce development.

**(k) An employer who makes the election described in IC 22-4-10.5-3.2 is not eligible to receive an allocation from the fund."**

Page 3, line 26, strike "his".

Page 3, line 26, after "his" insert "**the employing unit's**".

Page 5, between lines 11 and 12, begin a new paragraph and insert:  
**"SECTION 8. IC 22-4-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. "Employment" shall not include the following:**

**(a) (1)** Except as provided in section 2(i) of this chapter, service performed prior to January 1, 1978, in the employ of this state, any other state, any town or city, or political subdivision, or any instrumentality of any of them, other than service performed in the employ of a municipally owned public utility as defined in this article; or service performed in the employ of the United States of America, or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this article, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation statute, all of the provisions of this article shall be applicable to

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such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. However, if this state shall not be certified for any year by the Secretary of Labor under Section 3304 of the Internal Revenue Code the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in IC 22-4-32-19 with respect to contribution erroneously paid or wrongfully assessed.

~~(b)~~ **(2)** Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; however, the ~~board~~ **department** is authorized to enter into agreements with the proper agencies under such Act of Congress which agreements shall become effective ten (10) days after publication thereof, ~~in the manner provided in IC 22-4-19-2 for rules of the board; in accordance with rules adopted by the department under IC 4-22-2,~~ to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this article, acquired rights to unemployment compensation under such Act of Congress, or who have, after having acquired potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this article.

~~(c)~~ **(3)** "Agricultural labor" as provided in section 2(l)(1) of this chapter shall include only services performed:

~~(i)~~ **(A)** on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

~~(ii)~~ **(B)** in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

~~(iii)~~ **(C)** in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act (**12 U.S.C. 1141j(g)**) as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not

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owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

~~(iv)~~ ~~(A)~~ **(D)** in the employ of:

**(i)** the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

**or**

~~(B)~~ **in the employ of (ii)** a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in ~~subdivision (A);~~ **item (i)**, but only if such operators produce more than one-half (1/2) of the commodity with respect to which such service is performed;

~~(C)~~ **except** the provisions of ~~subdivisions (A) and (B)~~ **items (i) and (ii)** shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

~~(v)~~ **(E)** on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

**(4)** As used in ~~this subsection,~~ **subdivision (3)**, "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, nurseries, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

~~(d)~~ **(5)** Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in section 2(m) of this chapter.

~~(e)~~ **(6)** Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

~~(f)~~ **(7)** Service performed by an individual in the employ of child or spouse, and service performed by a child under the age of twenty-one (21) in the employ of a parent.

~~(g)~~ **(8)** Service not in the course of the employing unit's trade or

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business performed in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars (\$50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this ~~subsection~~, **subdivision**, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:

(~~ti~~) **(A)** on each of some of twenty-four (24) days during such quarter such individual performs such service for some portion of the day; or

(~~ti~~) **(B)** such individual was regularly employed (as determined under clause (~~ti~~) **(A)**) by such employing unit in the performance of such service during the preceding calendar quarter.

(~~ti~~) **(9)** Service performed by an individual in any calendar quarter in the employ of any organization exempt from income tax under Section 501 of the Internal Revenue Code (except those services included in sections 2(i) and 2(j) of this chapter if the remuneration for such service is less than fifty dollars (\$50)).

(~~ti~~) **(10)** Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(~~ti~~) **(11)** Service performed in the employ of a school, college, or university if such service is performed:

(~~ti~~) **(A)** by a student who is enrolled and is regularly attending classes at such school, college, or university; or

(~~ti~~) **(B)** by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that:

(~~A~~) **(i)** the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and

(~~B~~) **(ii)** such employment will not be covered by any program of unemployment insurance.

(~~ti~~) **(12)** Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such

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service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

~~(h)~~ **(13)** Service performed in the employ of a government foreign to the United States of America, including service as a consular or other officer or employee or a nondiplomatic representative.

~~(m)~~ **(14)** Service performed in the employ of an instrumentality wholly owned by a government foreign to that of the United States of America, if the service is of a character similar to that performed in foreign countries by employees of the United States of America or of an instrumentality thereof, and if the board finds that the Secretary of State of the United States has certified to the Secretary of the Treasury of the United States that the government, foreign to the United States, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in such country by employees of the United States and of instrumentalities thereof.

~~(n)~~ **(15)** Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four (4) year course in a medical school chartered or approved pursuant to state law.

~~(o)~~ **(16)** Service performed by an individual as an insurance producer or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

~~(p)~~~~(A)~~ **(17)** Service performed by an individual:

**(A)** under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; **or**

**(B)** ~~Services performed by an individual~~ in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by ~~him~~ **the individual** at a fixed price, ~~his the individual's~~ compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to ~~him~~, **the**

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**individual**, whether or not ~~he~~ **the individual** is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

~~(q)~~ **(18)** Service performed in the employ of an international organization.

~~(r)~~ **(19)** Except as provided in IC 22-4-7-1, services covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law in accordance with an arrangement pursuant to IC 22-4-22-1 through IC 22-4-22-5, during the effective period of such election.

~~(s)~~ **(20)** If the service performed during one-half (1/2) or more of any pay period by an individual for an employing unit constitutes employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any pay period by such an individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, "pay period" means a period of not more than thirty-one (31) consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit. This subsection shall not be applicable with respect to services performed in a pay period by any such individual where any such service is excepted by ~~subsection (b):~~ **subdivision (2)**.

~~(t)~~ **(21)** Service performed by an inmate of a custodial or penal institution.

~~(u)~~ **(22)** Service performed as a precinct election officer (as defined in IC 3-5-2-40.1)."

Page 8, line 17, delete "the following percentage of" and insert "the following percentage of".

Page 10, between lines 6 and 7, begin a new paragraph and insert:  
"SECTION 15. IC 22-4-10.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. The skills 2016 training assessment is nine hundredths percent (0.09%) to be assessed upon the previous year's taxable wages (as defined in IC 22-4-4-2) paid by all employers except those who have:

**(1) made the election described in section 3.2 of this chapter;**  
**or**

**(2) elected to make payments in lieu of contributions (as defined in IC 22-4-2-32).**



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SECTION 16. IC 22-4-10.5-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 3.2. (a) This section applies to skills 2016 training assessments payable after July 1, 2007.**

**(b) As used in this section, "employee" means any person employed by another for wages or salary. The term does not include a seasonal worker (as defined in IC 22-4-8-4(b)).**

**(c) An employer subject to this chapter that employs less than twenty (20) full-time employees may file an election each year not to:**

- (1) participate in the skills 2016 training program; and**
- (2) pay the skills 2016 training assessments;**

**with the department on a form prescribed by the commissioner.**

**(d) An employer must make the election described in subsection (c) for a calendar year not later than January 31 of the following year.**

**(e) For purposes of determining whether an employer qualifies to make the election under subsection (c), the number of employees employed by the employer is the average of the number of employees reported by the employer for each quarter of the calendar year for which the employer wants to elect not to:**

- (1) participate in the skills 2016 training program; and**
- (2) pay the skills 2016 training assessments.**

SECTION 17. IC 22-4-10.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 4. (a) This section does not apply to an employer who has made the election described in section 3.2 of this chapter.**

~~(a)~~ **(b)** Skills 2016 training assessments accrue and are payable by each employer under section 3 of this chapter for each calendar year in which the employer is subject to IC 22-4-10-1 with respect to wages for employment.

~~(b)~~ **(c)** Skills 2016 training assessments are due and payable to the department by each employer for the purposes set forth in section 2 of this chapter and are not deductible, in whole or in part, from the wages of individuals in the service of the employer.

~~(c)~~ **(d)** Skills 2016 training assessments paid under this chapter:

- (1) shall not be credited to the employer's experience account; and**
- (2) do not affect the computation of an employer's contribution rate under IC 22-4-11-2."**

Page 13, line 25, delete "chapter" and insert "chapter."

Page 15, line 7, delete "special".

Page 19, line 20, delete "decision to seek repayment of benefits or".

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Page 19, line 21, delete "a civil penalty" and insert **"determination"**.

Page 19, line 22, delete "IC 22-4-32-4" and insert **"IC 22-4-17-2(e)"**.

Page 19, line 23, delete "IC 22-4-32-1" and insert **"IC 22-4-17-3"**.

Page 19, line 23, delete "IC 22-4-32-15." and insert **"IC 22-4-17-15."**

Page 20, between lines 7 and 8, begin a new paragraph and insert:

**"(d) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling, or training that must be conducted in person at a one stop center selected by the individual. The department shall advise an eligible individual that this option is available."**

Page 20, line 13, delete "abuse." and insert **"or family violence (as defined in IC 31-9-2-42)."**

Page 29, line 15, strike "he".

Page 29, line 15, after "he" insert **"the member"**.

Page 32, between lines 13 and 14, begin a new paragraph and insert:

**"(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential."**

Page 33, between lines 39 and 40, begin a new paragraph and insert:

**"SECTION 46. IC 22-4-22-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The commissioner is authorized to enter into reciprocal agreements with the proper agencies under the laws of other states or jurisdictions or of the United States, which agreements shall become effective after filing with the secretary of state pursuant to IC 22-4-19-2, in accordance with rules adopted by the department under IC 4-22-2, by the terms of which agreements:**

(1) potential rights to benefits accumulated under the unemployment compensation laws of one (1) or more states or jurisdictions or of the United States, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable to all affected interests and which will not result in any substantial loss to the fund; and

(2) wages or services in employment subject to an unemployment compensation law of another state or of the United States shall be deemed to be wages in employment for employers for the purpose of determining an individual's rights to unemployment compensation benefits under this article, and wages in

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employment for employers as defined in this article shall be deemed to be wages or services on the basis of which unemployment compensation under the law of another state or of the United States is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the unemployment insurance benefit fund for such of the unemployment compensation benefits paid under this part upon the basis of such wages or services, and provisions for reimbursements from the unemployment insurance benefit fund for such of the compensation paid under such other law upon the basis of wages for employment as defined in this article as the commissioner finds will be fair and reasonable to all affected interests."

Page 39, line 23, after "for adjustment" delete "of" and insert "**or**".

Page 43, delete lines 8 through 9, begin a new paragraph and insert:  
"SECTION 69. THE FOLLOWING ARE REPEALED  
[EFFECTIVE JULY 1, 2006]: IC 22-4-16-1; IC 22-4-19-2;  
IC 22-4-19-3."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 321 as reprinted January 25, 2006.)

TORR, Chair

Committee Vote: yeas 6, nays 4.

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#### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 321 be amended to read as follows:

Page 23, line 19, delete "AS ADDED BY P.L.98-2005,".

Page 23, line 20, delete "SECTION 9," and insert "AS AMENDED  
BY HEA 1040-2006, SECTION 344,".

Page 23, line 22, reset in roman "who".

Page 23, line 23, reset in roman "violates this chapter".

Page 23, line 42, delete "IC 22-4-7-1 or IC 22-4-7-2)." and insert "~~IC 22-4-7-1~~).".

Page 37, line 36, strike "It shall be the duty".

Page 37, line 37, strike "of".

Page 37, line 37, before "board" delete "the" and insert "The".

Page 37, line 38, reset in roman "shall have the power and".

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Page 37, line 39, reset in roman "authority to adopt, amend, or rescind such rules and regulations".

Page 37, line 42, reset in roman "for the proper administration of this article. All".

Page 38, reset in roman lines 1 through 4.

Page 38, line 5, reset in roman "of this article shall be with or without retroactive effect.".

Page 38, line 5, delete "to carry out".

Page 38, line 6, delete "its duties under IC 22-4-18-2.".

Page 39, line 41, after "subsection (b)," insert **"the fact that a claim has been made under IC 22-4-15-1(c)(8) and"**.

Page 40, line 1, strike "is" and insert **"are"**.

(Reference is to ESB 321 as printed February 24, 2006.)

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#### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 321 be amended to read as follows:

Page 23, line 19, delete "AS ADDED BY P.L.98-2005,".

Page 23, line 20, delete "SECTION 9," and insert "AS AMENDED BY HEA 1040-2006, SECTION 344,".

Page 23, line 22, reset in roman "who".

Page 23, line 23, reset in roman "violates this chapter".

Page 23, line 42, delete "IC 22-4-7-1 or IC 22-4-7-2)." and insert "~~IC 22-4-7-1~~.".

Page 44, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 50. IC 22-4-25-2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) As used in this section, "fund" refers to the special employment and training services fund created under section 1 of this chapter.**

**(b) The commissioner may allocate an amount not to exceed two million dollars (\$2,000,000) annually from the fund to establish reemployment training accounts to provide training and reemployment services to department employees dislocated by:**

- (1) a reduction of funding for;**
- (2) a centralization or decentralization of; or**
- (3) the implementation of a more efficient technology or service delivery method in connection with;**

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**the programs and services provided under this article."**

Re-number all SECTIONS consecutively.

(Reference is to ESB 321 as printed February 24, 2006.)

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